



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

वीरवार, 01 जून, 2023/11 ज्येष्ठ, 1945

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Dated 31st March, 2023

No. Shram (A) 3-2/2023 (Awards) L.C. Shimla.— In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to

order the publication of awards of the following cases announced by the Presiding Judge, Labour Court, Shimla on the website of the Printing & Stationery Department, Himachal Pradesh *i.e.* “e-Gazette” :—

Sl. No.	Case No.	Petitioner	Respondent	Date of Award/Order
1.	Ref.01/2021	Kuldeep Kaur	M.D. Quixotic Health Care	02-01-2023
2.	Ref.02/2021	Ms. Rekha Massi	M.D. Quixotic Health Care	02-01-2023
3.	Ref.16/2021	Sh. Kamal Chand	M.D. Quixotic Health Care	02-01-2023
4.	Ref.17/2021	Jasbir Kaur	M.D. Quixotic Health Care	02-01-2023
5.	Ref.19/2021	Sh. Sunil Dutt	M.D. Quixotic Health Care	02-01-2023
6.	Ref.127/2021	Sh. Madan Lal	M.D. Quixotic Health Care	02-01-2023
7.	Ref.128/2021	Sh. Rahul Kumar	M.D. Quixotic Health Care	02-01-2023
8.	Ref.129/2021	Ms. Anita	M.D. Quixotic Health Care	02-01-2023
9.	Ref.131/2021	Ms. Savitri Devi	M.D. Quixotic Health Care	02-01- 2023
10.	Ref.132/2021	Sh. Sukhwinder Singh	M.D. Quixotic Health Care	02-01-2023
11.	Ref.135/2021	Sh. Khushi Ram	M.D. Quixotic Health Care	02-01-2023
12.	Ref.136/2021	Sh. Jamil Mohammed	M.D. Quixotic Health Care	02-01-2023
13.	Ref.137/2021	Balvinder Kaur	M.D. Quixotic Health Care	02-01-2023
14.	Ref.138/2021	Ms. Nebo Devi	M.D. Quixotic Health Care	02-01-2023
15.	Ref.139/2021	Sh. Amarjeet Singh	M.D. Quixotic Health Care	02-01-2023
16.	Ref.140/2021	Sh. Gurbachan Singh	M.D. Quixotic Health Care	02-01-2023
17.	Ref.141/2021	Sh. Jaspal	M.D. Quixotic Health Care	02-01-2023
18.	Ref.142/2021	Sh. Jasbir Singh	M.D. Quixotic Health Care	02-01-2023
19.	Ref.143/2021	Sh. Jaswant Singh	M.D. Quixotic Health Care	02-01-2023
20.	Ref.145/2021	Ms. Lata Devi	M.D. Quixotic Health Care	02-01-2023
21.	Ref.147/2021	Sh. Krishan Chand	M.D. Quixotic Health Care	02-01-2023
22.	Ref.150/2021	Sh. Gurmeet Singh	M.D. Quixotic Health Care	02-01-2023
23.	Ref.151/2021	Sh. Jatinder Kumar	M.D. Quixotic Health Care	02-01-2023
24.	Ref.152/2021	Sh. Datinder Singh	M.D. Quixotic Health Care	02-01-2023
25.	Ref.35/2020	Workers Union	M/s Sesa Care Ltd. & Ors.	02-01-2023
26.	Ref.39/2022	Sh. Rinku	M/s Ambi Pharma	02-01-2023
27.	Ref.40/2022	Sh. Rohtash	M/s Ambi Pharma	02-01-2023
28.	Ref.41/2022	Sh. Vijay Kumar	M/s Ambi Pharma	02-01-2023
29.	Ref.163/2021	Sh. Birbal	M/s Super Nova Auto Industries.	02-01-2023
30.	Ref.100/2021	Sh. Baldev	M/s Shree Khatuji Industries	02-01-2023
31.	Ref.123/2022	Sh. Inder Bahadur	M/s Hutamaki India Ltd.	02-01-2023
32.	Ref.98/2021	Sh. Manoj Kumar	M/s Adlex System	02-01-2023
33.	Ref. 287/2021	Sh. Anish Mohmmad	M/s Adlex System	02-01-2023

34.	Ref. 288/2021	Sh. Vijay Kumar	M/s Adlex System	02-01-2023
35.	Ref.148/2018	Sh. Suleman Uraon	Principal Convent of Jesus & Merry Nav Bahar.	02-01-2023
36.	Ref.149/2018	Sh. Bhag Singh	Principal Convent of Jesus & Merry Nav Bahar.	02-01-2023
37.	Ref.148/2020	Sh. Rakesh Kumar	Registrar AP Goyal University, Shimla.	02-01-2023
38.	Ref.189/2020	Sh. Subhash Chand	Registrar AP Goyal University, Shimla.	02-01-2023
39.	Ref.190/2020	Sh. Mahesh Verma	Registrar AP Goyal University, Shimla.	02-01-2023
40.	Ref.191/2020	Sh. Sudesh Kumar	Registrar AP Goyal University, Shimla.	02-01-2023
41.	Ref.151/2019	Sh. Sant Ram	M/s M. Sea Pharmaceuticals (P) Ltd.	02-01-2023
42.	Ref.90/2020	Sh. Rakesh Kumar	M/s Shimla Satellite Cable (P) Ltd.	02-01-2023
43.	Ref.91/2020	Ram Krishan Sharma	M/s Shimla Satellite Cable (P) Ltd.	02-01-2023
44.	Ref.67/2020	Sh. Man Mohan	The Ex. Engineer, IPH, Nalagarh & Ors.	02-01-2023
45.	Ref.68/2020	Sh. Krishan Chand	The Ex. Engineer, IPH, Nalagarh & Ors.	02-01-2023
46.	Ref.69/2020	Sh. Ram Chand	The Ex. Engineer, IPH, Nalagarh & Ors.	02-01-2023
47.	Ref.300/2020	Sh. Sanjeev Kumar	The Ex. Engineer, IPH, Nalagarh & Ors.	02-01-2023
48.	Ref.301/2020	Sh. Rakesh Kumar	The Ex. Engineer, IPH, Nalagarh & Ors.	02-01-2023
49.	Ref.302/2020	Sh. Arjun	The Ex. Engineer, IPH, Nalagarh & Ors.	02-01-2023
50.	App.327/2022	Ms. Sharda Devi	C.O. 68 BRO Deepak Project & Ors.	02-01-2023
51.	Ref. 170/2018	Ms. Monika	SMC Packaging (P) Ltd.	02-01-2023
52.	Ref. 105/2019	Sh. Jogi Ram	The Labour Officer Nahan & Ors.	02-01-2023
53.	Ref.84/2017	Sh. Uday Bhardwaj	Editor, Amar Ujala Publications Ltd. & Anr.	02-01-2023
54.	Ref.118/2017	Sh. Bhupinder Chauhan	M/s Satya Sawadesh.	02-01-2023
55.	Ref.136/2020	Sh. Sukhvinder Singh	M/s Samarth Life Sciences (P) Ltd.	02-01-2023
56.	Ref.33/2019	Sh. Dev Raj Sharma	M/s Spectra Equated System Parwanoo.	02-01-2023
57.	Ref.219/2020	Gen. Secy. Karcham Wangtu & Anr.	Himachal Baspa Power Co. Ltd. & Anr.	02-01-2023

58.	Ref. 169/2022	Sh. Bablu	M/s HP Petrol Pump	02-01-2023
59.	App.14/2022	Sh. Prem Chand	M/s BETA Drugs Ltd.	02-01-2023
60.	App. 28/2021	Sh. Mohan Lal	XEN, Electrical Division, HPSEBL & Anr.	02-01-2023
61.	App. 29/2021	Sh. Lal Chand	XEN Electrical Division, HPSEBL & Anr.	02-01-2023
62.	App. 30/2021	Sh. Mansa Ram	XEN, Electrical Division, HPSEBL & Anr.	02-01-2023
63.	App. 31/2021	Sh. Ghunghriya Ram	XEN, Electrical Division, HPSEBL & Anr.	02-01-2023
64.	App. 32/2021	Sh. Charan Dass	XEN, Electrical Division, HPSEBL & Anr.	02-01-2023
65.	App. 33/2021	Sh. Neem Chand	XEN, Electrical Division, HPSEBL & Anr.	02-01-2023
66.	App. 34/2021	Sh. Sher Singh	XEN, Electrical Division, HPSEBL & Anr.	02-01-2023
67.	App. 58/2021	Sh. Sita Ram	XEN, Electrical Division, HPSEBL & Anr.	02-01-2023
68.	Ref. 10/2023	Sh. Ashwani Kumar	M/s Srijan Bhog Co. (P) Ltd.	09-01-2023
69.	App.149/2020	M/s Srijan Bhog Co. (P) Ltd.	Sh. Ashwani Kumar	09-01-2023
70.	Ref.121/2020	Sh. Darshan Singh	M/s Onyx Biotech (P) Ltd.	09-01-2023
71.	Ref. 23/2022	Sh. Kamaldeep	Principal Dagshai Public School, Dagshai.	16-01-2023
72.	App. 254/2022	Sh. Inder Pal & Anr.	Principal Dagshai Public School, Dagshai.	16-01-2023
73.	Ref. 242/2020	Sh. Pratap Singh	M/s Shiv Shakti B.Ed College.	16-01-2023
74.	Ref.106/2019	Sh. Mohinder Kumar	M/s Kasauli Exotica	16-01-2023
75.	Ref. 145/2022	Sh. Ramesh Kumar	M/s Venesa Cosmetics	19-01-2023
76.	App.78/2019	Sh. Ram Krishan	The XEN, IPH, Paonta Sahib	19-01-2023
77.	Ref. 231/2020	Sh. Mastan Singh	M.D. Regent Energy Ltd.	23-01-2023

By order,

AKSHAY SOOD,
Secretary (Lab. & Emp.).

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 01 of 2021

Instituted on : 08-01-2021

Decided on : 02-01-2023

Kuldeep Kaur, w/o Shri Bhag Singh, r/o Village Karanpur, P. O. Nanakpur, Tehsil Kalka, District Panchkula, Haryana. .*Petitioner.*

VERSUS

The Managing Director M/s Quixotic Health Care (Unit-II), Village Kalu Jhanda, P.O. Barotiwala, Tehsil Baddi, District Solan, H.P. .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Ravi Tekta, Advocate

For respondent : Shri Dheeraj Bansal, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 11.12.2020, under section 10 of the Industrial Disputes Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication:

“Whether termination of the services of Smt. Kuldeep Kaur, w/o Bhag Singh, r/o Village Karanpur, P.O Nanakpur, Tehsil Kalka, District Panchkula, Haryana by way of closing down the gate w.e.f. 24.01.2020, by the Managing Director, M/s Quixotic Health care (Unit-II) Village Kalu Jhanda, P.O. Barotiwala, Tehsil- Baddi, Distt. Solan, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including reinstatement, back wages, seniority, past service benefits and compensation the above aggrieved workman, is entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri Ravi Tekta, Advocate has appeared on behalf of the petitioner whereas Shri Dheeraj Bansal, Advocate had appeared for respondent.

3. To the fore Shri S. L. Gupta, Manager, HR of respondent company has stated at the bar that the Industrial Dispute raised on behalf of the petitioner stood amicably resolved by way of an amicable settlement (PZ) and the respondent company has agreed to pay an amount of Rs. 82,000/- (Rs. Eighty Two Thousand only) towards full and final settlement amount of the claim within a period of one month from the date of the announcement of award failing which the respondent company shall be liable to pay penal interest @ 9% per annum. He has also placed on record memorandum of settlement (PZ), identity card (PY) and settlement deed (PZ). To this effect his statement recorded separately and placed on record.

4. Vide separate statement Smt. Kuldeep Kaur, petitioner, has stated that she was engaged in the respondent company on 06.02.2010 and had worked as such till 27.01.2020. She had completed 240 working days in each calendar year. She raised an industrial dispute regarding the termination of her services by the respondent management by way of closing down gates w.e.f 27.01.2020, without complying in the provision of the Industrial Dispute Act 1947, for which the reference has been received from the appropriate government for its legal adjudication. She further stated at the bar that the aforesaid industrial dispute raised on her behalf stood amicably resolved by way of an amicable settlement. As per the settlement the respondent/company is ready and willing

to make her the full and final payment towards lump sum compensation amounting to Rs. 82,000/- (Eighty Two Thousand Only), which the acceptable to her. The full and final settlement award shall be paid to her within one month from the date of the announcement of the award, failing which the respondent company shall be liable to pay penal interest @ 9% per annum. Nothing survives in the present petition. The above said statement was read over and explained to him which is duly accepted by him.

5. Thus, keeping in view that attendant facts and circumstances of the case vis- a -vis perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and she has been paid a sum of **Rs. 82,000/- (Rs. Eighty Two Thousand Only) through cheque No. 002694 dated 20.12.2022** as full and final settlement amount of the claim today in the Court. Therefore, the industrial dispute raised from the side of the petitioner arising out of reference no. 01/2021, stood amicably settled between the parties.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying Rs. 82,000/- (Eighty Two Thousand Only) through cheque No. 002694 dated 20.12.2022.** This a part, the petitioner is also entitled for his/her admissible legal dues as per law such as EPF, ESI etc. The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record i.e memorandum of settlement (PZ), identity card (PY), Settlement deed (PZ), full & final payment receipt along-with copy of cheque and resignation (PW), copy of Aadhar Card (PX), which shall form the integral part and parcel of this award.

7. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced : 2-1-2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 02 of 2021

Instituted on : 08-01-2021

Decided on : 02-01-2023

Rekha Massi w/o Shri Jagtar Massi, r/o Village Karanpur, P.O. Nanakpur, Tehsil Kalka,
District Panchkula, Haryana. . Petitioner.

VERSUS

The Managing Director M/s Quixotic Health Care (Unit-II), Village Kalu Jhanda, P.O. Barotiwala, Tehsil Baddi, District Solan, H.P. . .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Ravi Tekta, Advocate

For respondent : Shri Dheeraj Bansal, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 11.12.2020, under section 10 of the Industrial Disputes Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication:

“Whether termination of the services of Smt. Rekha Massi w/o Jagtar Massi, r/o VillageKaranpur, P.O. Nanakpur, Tehsil Kalka, District Panchkula, Haryana. by way of closing down the gate w.e.f. 24.01.2020, by the Managing Director, M/s Quixotic Health care (Unit-II) Village Kalu Jhanda, P.O. Barotiwala, Tehsil- Baddi, Distt. Solan, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including reinstatement, back wages, seniority, past service benefits and compensation the above aggrieved workman, is entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri Ravi Tekta, Advocate has appeared on behalf of the petitioner whereas Shri Dheeraj Bansal, Advocate had appeared for respondent.

3. To the fore Shri S.L. Gupta, Manager, HR of respondent company has stated at the bar that the Industrial Dispute raised on behalf of the petitioner stood amicably resolved by way of an amicable settlement (PZ) and the respondent company has agreed to pay an amount of Rs. 75,000/- (Rs. Seventy Five Thousand only) towards full and final settlement amount of the claim within a period of one month from the date of the announcement of award failing which the respondent company shall be liable to pay penal interest @ 9% per annum. He has also placed on record memorandum of settlement (PZ), identity card (PY) and settlement deed (PZ). To this effect his statement recorded separately and placed on record.

4. Vide separate statement Smt. Rekhs Massi, petitioner, has stated that she was engaged in the respondent company on 10.11.2011 and had worked as such till 27.01.2020. She had completed 240 working days in each calendar year. She raised an industrial dispute regarding the termination of her services by the respondent management by way of closing down gates w.e.f 27.01.2020, without complying in the provision of the Industrial Dispute Act 1947, for which the reference has been received from the appropriate government for its legal adjudication. She further stated at the bar that the aforesaid industrial dispute raised on her behalf stood amicably resolved by way of an amicable settlement. As per the settlement the respondent/company is ready and willing to make her the full and final payment towards lump sum compensation amounting to Rs. 75,000/- (Seventy Five Thousand Only), which the acceptable to her. The full and final settlement award shall be paid to her within one month from the date of the announcement of the award, failing which the respondent company shall be liable to pay penal interest @ 9% per annum. Nothing survives in the present petition. The above said statement was read over and explained to him which is duly accepted by him.

5. Thus, keeping in view that attendant facts and circumstances of the case vis- a –vis perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and she has been paid a sum of **Rs. 75,000/- (Rs. Seventy Five Thousand Only) through cheque No. 002696 dated 20.12.2022** as full and final settlement amount of the claim today in the Court. Therefore, the industrial dispute raised from the side of the petitioner arising out of reference no. 02/2021, stood amicably settled between the parties.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying Rs. 75,000/- (Seventy Five Thousand Only) through cheque No. 002696 dated 20.12.2022.** This a part, the petitioner is also entitled for his/her admissible legal dues as per law such as EPF, ESI etc. The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record i.e memorandum of settlement (PZ), identity card (PY), Settlement deed (PZ), full & final payment receipt along-with copy of cheque and resignation (PW), copy of Aadhar Card (PX), which shall form the integral part and parcel of this award.

7. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced : 2-1-2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 16 of 2021

Instituted on : 19-01-2021

Decided on : 02-01-2023

Kamal Chand, s/o Shri Bachna Ram, r/o Village Kalu Jhanda, P.O. Mandhala, Tehsil Baddi, District Solan, H.P. . .Petitioner.

VERSUS

The Managing Director M/s Quixotic Health Care (Unit-II), Village Kalu Jhanda, P.O. Barotiwala, Tehsil Baddi, District Solan, H.P. . .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Ravi Tekta, Advocate

For respondent : Shri Dheeraj Bansal, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 11.12.2020, under section 10 of the Industrial Disputes Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication:

“Whether termination of the services of Sh. Kamal Chand, s/o Shri Bachna Ram, r/o Village Kalu Jhanda, P.O. Mandhala, Tehsil Baddi, District Solan, H.P. by way of closing down the gate w.e.f. 24.01.2020, by the Managing Director, M/s Quixotic Health care (Unit-II) Village Kalu Jhanda, P.O. Barotiwala, Tehsil- Baddi, Distt. Solan, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including reinstatement, back wages, seniority, past service benefits and compensation the above aggrieved workman, is entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri Ravi Tekta, Advocate has appeared on behalf of the petitioner whereas Shri Dheeraj Bansal, Advocate had appeared for respondent.

3. To the fore Shri S.L. Gupta, Manager, HR of respondent company has stated at the bar that the Industrial Dispute raised on behalf of the petitioner stood amicably resolved by way of an amicable settlement (PZ) and the respondent company has agreed to pay an amount of Rs. 95,000/- (Rs. Ninety Five Thousand only) towards full and final settlement amount of the claim within a period of one month from the date of the announcement of award failing which the respondent company shall be liable to pay penal interest @ 9% per annum. He has also placed on record memorandum of settlement (PZ), identity card (PY) and settlement deed (PZ). To this effect his statement recorded separately and placed on record.

4. Vide separate statement Shri Kamal Chand, petitioner, has stated that he was engaged in the respondent company on 01.03.2010 and had worked as such till 27.01.2020. He had completed 240 working days in each calendar year. He raised an industrial dispute regarding the termination of his services by the respondent management by way of closing down gates w.e.f. 27.01.2020, without complying in the provision of the Industrial Dispute Act 1947, for which the reference has been received from the appropriate government for its legal adjudication. He further stated at the bar that the aforesaid industrial dispute raised on his behalf stood amicably resolved by way of an amicable settlement. As per the settlement the respondent/company is ready and willing to make him the full and final payment towards lump sum compensation amounting to Rs. 95,000/- (Ninety Five Thousand Only), which the acceptable to him. The full and final settlement award shall be paid to him within one month from the date of the announcement of the award, failing which the respondent company shall be liable to pay penal interest @ 9% per annum. Nothing survives in the present petition. The above said statement was read over and explained to him which is duly accepted by him.

5. Thus, keeping in view that attendant facts and circumstances of the case vis- a –vis perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and he has been paid a sum of **Rs. 95,000/- (Rs. Ninety Five Thousand Only) through cheque No. 002703 dated 20.12.2022** as full and final settlement amount of the claim today in the Court. Therefore, the industrial dispute raised from the side of the petitioner arising out of reference no. 16/2021, stood amicably settled between the parties.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying Rs. 95,000/- (Eighty Thousand Only) through cheque No. 002703 dated 20.12.2022. This a part, the petitioner is also entitled for his/her admissible legal dues as per law such as EPF, ESI etc.** The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record i.e memorandum of settlement (PZ), identity card (PY), Settlement deed (PZ), full & final payment receipt along-with copy of cheque and resignation (PW), copy of Aadhar Card (PX), which shall form the integral part and parcel of this award.

7. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced : 02-01-2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 17 of 2021

Instituted on : 19-01-2021

Decided on : 02-01-2023

Jasbir Kaur w/o Shri Bhag Singh, r/o Village Shera, P.O. Mandhala, Tehsil Baddi, District Solan, H.P. . .*Petitioner.*

VERSUS

The Managing Director M/s Quixotic Health Care (Unit-II), Village Kalu Jhanda, P.O Barotiwala, Tehsil Baddi, District Solan, H.P. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Ravi Tekta, Advocate

For respondent : Shri Dheeraj Bansal, Advocate.

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 11.12.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the services of Smt. Jasbir Kaur w/o Shri Bhag Singh, r/o Village Shera, P.O. Mandhala, Tehsil Baddi, District Solan, H.P. by way of closing down the gate w.e.f. 24.01.2020, by the Managing Director, M/s Quixotic Health care (Unit-II) Village Kalu Jhanda, P.O. Barotiwala, Tehsil- Baddi, Distt. Solan, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including reinstatement, back wages, seniority, past service benefits and compensation the above aggrieved workman, is entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri Ravi Tekta, Advocate has appeared on behalf of the petitioner whereas Shri Dheeraj Bansal, Advocate had appeared for respondent.

3. To the fore Shri S. L. Gupta, Manager, HR of respondent company has stated at the bar that the Industrial Dispute raised on behalf of the petitioner stood amicably resolved by way of an amicable settlement (PZ) and the respondent company has agreed to pay an amount of Rs. 85,000/- (Rs. Eighty Five Thousand only) towards full and final settlement amount of the claim within a period of one month from the date of the announcement of award failing which the respondent company shall be liable to pay penal interest @ 9% per annum. He has also placed on record memorandum of settlement (PZ), identity card (PY) and settlement deed (PZ). To this effect his statement recorded separately and placed on record.

4. Vide separate statement Smt. Jasbir Kaur, petitioner, has stated that she was engaged in the respondent company on 04.03.2010 and had worked as such till 27.01.2020. She had completed 240 working days in each calendar year. She raised an industrial dispute regarding the termination of her services by the respondent management by way of closing down gates w.e.f. 27.01.2020, without complying in the provision of the Industrial Dispute Act 1947, for which the reference has been received from the appropriate government for its legal adjudication. She further stated at the bar that the aforesaid industrial dispute raised on her behalf stood amicably resolved by way of an amicable settlement. As per the settlement the respondent/company is ready and willing to make her the full and final payment towards lump sum compensation amounting to Rs. 85,000/- (Eighty Five Thousand Only), which is acceptable to her. The full and final settlement award shall be paid to her within one month from the date of the announcement of the award, failing which the respondent company shall be liable to pay penal interest @ 9% per annum. Nothing survives in the present petition. The above said statement was read over and explained to her which is duly accepted by her.

5. Thus, keeping in view that attendant facts and circumstances of the case vis-à-vis perusal of the case record manifestly and conclusively goes to demonstrate that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and she has been paid a sum of Rs. 85,000/- (Rs. Eighty Five Thousand Only) through cheque No. 002690 dated 20.12.2022 as full and final settlement amount of the claim today in the Court. Therefore, the industrial dispute raised from the side of the petitioner arising out of reference no. 17/2021, stood amicably settled between the parties.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying Rs. 85,000/- (Eighty Five Thousand Only) through cheque No. 002690 dated 20.12.2022. This apart, the petitioner is also entitled for his/her admissible legal dues as per law such as EPF, ESI etc. The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record i.e.

memorandum of settlement (PZ), identity card (PY), Settlement deed (PZ), full & final payment receipt along-with copy of cheque and resignation (PW), copy of Aadhar Card (PX), which shall form the integral part and parcel of this award.

7. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced : 02-01-2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H. P. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number : 19 of 2021

Instituted on : 19-01-2021

Decided on : 02-01-2023

Sunil Dutt s/o Shri Birbal, r/o Village Nara (Behal), P.O. Galod, District Hamirpur, H.P.

. .Petitioner.

VERSUS

The Managing Director M/s Quixotic Health Care (Unit-II), Village Kalu Jhanda, P.O. Barotiwala, Tehsil Baddi, District Solan, H.P.

. .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Ravi Tekta, Advocate

For respondent : Shri Dheeraj Bansal, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 11.12.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the services of Sh. Sunil Dutt, s/o Shri Birbal r/o Village Nara (Behal), P.O. Galod, District Hamirpur, H.P. by way of closing down the gate w.e.f. 24.01.2020, by the Managing Director, M/s Quixotic Health care (Unit-II) Village Kalu Jhanda, P.O Barotiwala, Tehsil- Baddi, Distt. Solan, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including reinstatement, back wages, seniority, past service benefits and compensation the above aggrieved workman, is entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri Ravi Tekta, Advocate has appeared on behalf of the petitioner whereas Shri Dheeraj Bansal, Advocate had appeared for respondent.

3. To the fore Shri S. L. Gupta, Manager, HR of respondent company has stated at the bar that the Industrial Dispute raised on behalf of the petitioner stood amicably resolved by way of an amicable settlement (PZ) and the respondent company has agreed to pay an amount of Rs. 1,15,000/- (Rs. One Lakhs Fifteen Thousand only) towards full and final settlement amount of the claim within a period of one month from the date of the announcement of award failing which the respondent company shall be liable to pay penal interest @ 9% per annum. He has also placed on record memorandum of settlement (PZ), identity card (PY) and settlement deed (PZ). To this effect his statement recorded separately and placed on record.

4. Vide separate statement Shri Sunil Dutt, petitioner, has stated that he was engaged in the respondent company on 01.01.2009 and had worked as such till 27.01.2020. He had completed 240 working days in each calendar year. He raised an industrial dispute regarding the termination of his services by the respondent management by way of closing down gates w.e.f 27.01.2020, without complying in the provision of the Industrial Dispute Act 1947, for which the reference has been received from the appropriate government for its legal adjudication. He further stated at the bar that the aforesaid industrial dispute raised on his behalf stood amicably resolved by way of an amicable settlement. As per the settlement the respondent/company is ready and willing to make him the full and final payment towards lump sum compensation amounting to Rs. 1,15,000/- (One Lakhs Fifteen Thousand Only), which the acceptable to him. The full and final settlement award shall be paid to him within one month from the date of the announcement of the award, failing which the respondent company shall be liable to pay penal interest @ 9% per annum. Nothing survives in the present petition. The above said statement was read over and explained to him which is duly accepted by him.

5. Thus, keeping in view that attendant facts and circumstances of the case vis- a -vis perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and he has been paid a sum of Rs. 1,15,000/- (Rs. One Lakhs Fifteen Thousand Only) through cheque No. 002689 dated 20.12.2022 as full and final settlement amount of the claim today in the Court. Therefore, the industrial dispute raised from the side of the petitioner arising out of reference no. 19/2021, stood amicably settled between the parties.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying Rs. 1,15,000/- (One Lakhs Fifteen Thousand Only) through cheque No. 002689 dated 20.12.2022. This a part, the petitioner is also entitled for his/her admissible legal dues as per law such as EPF, ESI etc. The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record i.e memorandum of settlement (PZ), identity card (PY), Settlement deed (PZ), full & final payment receipt along-with copy of cheque and resignation (PW), copy of Aadhar Card (PX), which shall form the integral part and parcel of this award.

7. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced : 02-01-2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 127 of 2021

Instituted on : 31-08-2021

Decided on : 02-01-2023

Madan Lal s/o Shri Pyara Lal, r/o Village Karanpur, P.O. Nanakpur, Tehsil Kalka, District Panchkula, Haryana . .Petitioner.

VERSUS

The Managing Director M/s Quixotic Health Care (Unit-II), Village Kalu Jhanda, P.O. Barotiwala, Tehsil Baddi, District Solan, H.P. . .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Ravi Tekta, Advocate

For respondent : Shri Dheeraj Bansal, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 23.12.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the services of Sh. Madan Lal s/o Shri Pyara Lal, r/o Village Karanpur, P.O. Nanakpur, Tehsil Kalka, District Panchkula, Haryana by way of closing down the gate w.e.f. 27.01.2020, by the Managing Director, M/s Quixotic Health care (Unit-II) Village Kalu Jhanda, P.O Barotiwala, Tehsil- Baddi, Distt. Solan,H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including reinstatement, back wages, seniority, past service benefits and compensation the above aggrieved workman, is entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri Ravi Tekta, Advocate has appeared on behalf of the petitioner whereas Shri Dheeraj Bansal, Advocate had appeared for respondent.

3. To the fore Shri S.L. Gupta, Manager, HR of respondent company has stated at the bar that the Industrial Despute raised on behalf of the petitioner stood amicably resolved by way of an amicable settlement (PZ) and the respondent company has agreed to pay an amount of Rs. 85,000/- (Rs. Eighty Five Thousand only) towards full and final settlement amount of the claim within a period of one month from the date of the announcement of award failing which the respondent company shall be liable to pay penal interest @ 9% per annum. He has also placed on record memorandum of settlement (PZ), identity card (PY) and settlement deed (PZ). To this effect his statement recorded separately and placed on record.

4. Vide separate statement Shri MadanLal, petitioner, has stated that he was engaged in the respondent company on 01.05.2010 and had worked as such till 27.01.2020. He had completed 240 working days in each calendar year. He raised an industrial dispute regarding the termination

of his services by the respondent management by way of closing down gates w.e.f 27.01.2020, without complying in the provision of the Industrial Dispute Act 1947, for which the reference has been received from the appropriate government for its legal adjudication. He further stated at the bar that the aforesaid industrial dispute raised on his behalf stood amicably resolved by way of an amicable settlement. As per the settlement the respondent/company is ready and willing to make him the full and final payment towards lump sum compensation amounting to Rs. 85,000/- (Eighty Five Thousand Only), which the acceptable to him. The full and final settlement award shall be paid to him within one month from the date of the announcement of the award, failing which the respondent company shall be liable to pay penal interest @ 9% per annum. Nothing survives in the present petition. The above said statement was read over and explained to him which is duly accepted by him.

5. Thus, keeping in view that attendant facts and circumstances of the case vis- a -vis perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and he has been paid a sum of Rs. 85,000/- (Rs. Eighty Five Thousand Only) through cheque No. 002705 dated 20.12.2022 as full and final settlement amount of the claim today in the Court. Therefore, the industrial dispute raised from the side of the petitioner arising out of reference no. 127/2021, stood amicably settled between the parties.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying Rs. 85,000/- (Eighty Five Thousand Only) through cheque No. 002705 dated 20.12.2022. This a part, the petitioner is also entitled for his/her admissible legal dues as per law such as EPF, ESI etc. The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record i.e memorandum of settlement (PZ), identity card (PY), Settlement deed (PZ), full & final payment receipt along-with copy of cheque and resignation (PW), copy of Aadhar Card (PX), which shall form the integral part and parcel of this award.

7. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced : 02-01-2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 128 of 2021

Instituted on : 31-08-2021

Decided on : 02-01-2023

Rahul Kumar s/o Shri Sadh Ram, r/o Village Kalrawali, P.O. Mandhala, Tehsil Baddi, District Solan, H.P. . .Petitioner.

VERSUS

The Managing Director M/s Quixotic Health Care (Unit-II), Village Kalu Jhanda, P.O. Barotiwala, Tehsil Baddi, District Solan, H.P. . .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Ravi Tekta, Advocate

For respondent : Shri Dheeraj Bansal, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 23.12.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the services of Sh. Rahul Kumar s/o Shri Sadh Ram, r/o Village Kalrawali, P.O. Mandhala, Tehsil Baddi, District Solan, H.P. by way of closing down the gate w.e.f. 27.01.2020, by the Managing Director, M/s Quixotic Health care (Unit-II) Village Kalu Jhanda, P.O. Barotiwala, Tehsil- Baddi, Distt. Solan, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including reinstatement, back wages, seniority, past service benefits and compensation the above aggrieved workman, is entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri Ravi Tekta, Advocate has appeared on behalf of the petitioner whereas Shri Dheeraj Bansal, Advocate had appeared for respondent.

3. To the fore Shri S.L. Gupta, Manager, HR of respondent company has stated at the bar that the Industrial Dispute raised on behalf of the petitioner stood amicably resolved by way of an amicable settlement (PZ) and the respondent company has agreed to pay an amount of Rs. 80,000/- (Rs. Eighty Thousand only) towards full and final settlement amount of the claim within a period of one month from the date of the announcement of award failing which the respondent company shall be liable to pay penal interest @ 9% per annum. He has also placed on record memorandum of settlement (PZ), identity card (PY) and settlement deed (PZ). To this effect his statement recorded separately and placed on record.

4. Vide separate statement Shri Rahul Kumar, petitioner, has stated that he was engaged in the respondent company on 06.06.2011 and had worked as such till 27.01.2020. He had completed 240 working days in each calendar year. He raised an industrial dispute regarding the termination of his services by the respondent management by way of closing down gates w.e.f 27.01.2020, without complying in the provision of the Industrial Dispute Act 1947, for which the reference has been received from the appropriate government for its legal adjudication. He further stated at the bar that the aforesaid industrial dispute raised on his behalf stood amicably resolved by way of an amicable settlement. As per the settlement the respondent/company is ready and willing to make him the full and final payment towards lump sum compensation amounting to Rs. 80,000/- (Eighty Thousand Only), which the acceptable to him. The full and final settlement award shall be

paid to him within one month from the date of the announcement of the award, failing which the respondent company shall be liable to pay penal interest @ 9% per annum. Nothing survives in the present petition. The above said statement was read over and explained to him which is duly accepted by him.

5. Thus, keeping in view that attendant facts and circumstances of the case vis- a -vis perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and he has been paid a sum of Rs. 80,000/- (Rs. Eighty Thousand Only) through cheque No. 002684 dated 20.12.2022 as full and final settlement amount of the claim today in the Court. Therefore, the industrial dispute raised from the side of the petitioner arising out of reference no. 128/2021, stood amicably settled between the parties.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying Rs. 80,000/- (Eighty Thousand Only) through cheque No. 002684 dated 20.12.2022. This a part, the petitioner is also entitled for his/her admissible legal dues as per law such as EPF, ESI etc. The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record i.e memorandum of settlement (PZ), identity card (PY), Settlement deed (PZ), full & final payment receipt along-with copy of cheque and resignation (PW), copy of Aadhar Card (PX), which shall form the integral part and parcel of this award.

7. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced : 02-01-2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 129 of 2021

Instituted on : 31-08-2021

Decided on : 02-01-2023

Anita w/o Shri Sanjeev Kumar, r/o Village & P.O. Nanakpur, Tehsil Kalka, District Panchkula, Haryana. *.Petitioner.*

VERSUS

The Managing Director M/s Quixotic Health Care (Unit-II), Village Kalu Jhanda, P.O. Barotiwala, Tehsil Baddi, District Solan, H.P. *.Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Ravi Tekta, Advocate

For respondent : Shri Dheeraj Bansal, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 23.12.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the services of Smt. Anita, w/o Shri Sanjeev Kumar, r/o Village & P.O. Nanakpur, Tehsil Kalka, District Panchkula, Haryana by way of closing down the gate w.e.f. 27.01.2020, by the Managing Director, M/s Quixotic Health care (Unit-II) Village Kalu Jhanda, P.O. Barotiwala, Tehsil- Baddi, Distt. Solan, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including reinstatement, back wages, seniority, past service benefits and compensation the above aggrieved workman, is entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri Ravi Tekta, Advocate has appeared on behalf of the petitioner whereas Shri Dheeraj Bansal, Advocate had appeared for respondent.

3. To the fore Shri S. L. Gupta, Manager, HR of respondent company has stated at the bar that the Industrial Dispute raised on behalf of the petitioner stood amicably resolved by way of an amicable settlement (PZ) and the respondent company has agreed to pay an amount of Rs. 60,000/- (Rs. Sixty Thousand only) towards full and final settlement amount of the claim within a period of one month from the date of the announcement of award failing which the respondent company shall be liable to pay penal interest @ 9% per annum. He has also placed on record memorandum of settlement (PZ), identity card (PY) and settlement deed (PZ). To this effect his statement recorded separately and placed on record.

4. Vide separate statement Smt Anita Devi, petitioner, has stated that she was engaged in the respondent company on 01.09.2014 and had worked as such till 27.01.2020. She had completed 240 working days in each calendar year. She raised an industrial dispute regarding the termination of her services by the respondent management by way of closing down gates w.e.f 27.01.2020, without complying in the provision of the Industrial Dispute Act 1947, for which the reference has been received from the appropriate government for its legal adjudication. She further stated at the bar that the aforesaid industrial dispute raised on her behalf stood amicably resolved by way of an amicable settlement. As per the settlement the respondent/company is ready and willing to make her the full and final payment towards lump sum compensation amounting to Rs. 60,000/- (Sixty Thousand Only), which the acceptable to her. The full and final settlement award shall be paid to him within one month from the date of the announcement of the award, failing which the respondent company shall be liable to pay penal interest @ 9% per annum. Nothing survives in the present petition. The above said statement was read over and explained to him which is duly accepted by him.

5. Thus, keeping in view that attendant facts and circumstances of the case vis- a -vis perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by

the petitioner and she has been paid a sum of **Rs. 60,000/- (Rs. Sixty Thousand Only)** through **cheque No. 002697 dated 20.12.2022** as full and final settlement amount of the claim today in the Court. Therefore, the industrial dispute raised from the side of the petitioner arising out of reference no.129/2021, stood amicably settled between the parties.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying Rs. 60,000/- (Seventy Thousand Only) through cheque No. 002699 dated 20.12.2022. This a part, the petitioner is also entitled for his/her admissible legal dues** as per law such as EPF, ESI etc. The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record i.e memorandum of settlement (PZ), identity card (PY), Settlement deed (PZ), full & final payment receipt along-with copy of cheque and resignation (PW), copy of Aadhar Card (PX), which shall form the integral part and parcel of this award.

7. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced : 02-01-2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 131 of 2021

Instituted on : 31-08-2021

Decided on : 02-01-2023

Savitri Devi w/o Shri Ashok Kumar, r/o Village Kotiyan, P.O. Mandhala, Tehsil Kalka, District Solan, H.P. *.Petitioner.*

VERSUS

The Managing Director M/s Quixotic Health Care (Unit-II), Village Kalu Jhanda, P.O. Barotiwala, Tehsil Baddi, District Solan, H.P. *.Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Ravi Tekta, Advocate

For respondent : Shri Dheeraj Bansal, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 23.12.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the services of Smt. Savitri Devi w/o Ashok Kumar, r/o Village Kotiyan P.O. Mandhala, Tehsil Kalka, District Solan, H.P. by way of closing down the gate w.e.f. 27.01.2020, by the Managing Director, M/s Quixotic Health care (Unit-II) Village Kalu Jhanda, P.O. Barotiwala, Tehsil- Baddi, Distt. Solan, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including reinstatement, back wages, seniority, past service benefits and compensation the above aggrieved workman, is entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri Ravi Tekta, Advocate has appeared on behalf of the petitioner whereas Shri Dheeraj Bansal, Advocate had appeared for respondent.

3. To the fore Shri S.L. Gupta, Manager, HR of respondent company has stated at the bar that the Industrial Dispute raised on behalf of the petitioner stood amicably resolved by way of an amicable settlement (PZ) and the respondent company has agreed to pay an amount of Rs. 75,000/- (Rs. Seventy Five Thousand only) towards full and final settlement amount of the claim within a period of one month from the date of the announcement of award failing which the respondent company shall be liable to pay penal interest @ 9% per annum. He has also placed on record memorandum of settlement (PZ), identity card (PY) and settlement deed (PZ). To this effect his statement recorded separately and placed on record.

4. Vide separate statement Smt. Savitri Devi, petitioner, has stated that she was engaged in the respondent company on 01.09.2010 and had worked as such till 27.01.2020. She had completed 240 working days in each calendar year. She raised an industrial dispute regarding the termination of her services by the respondent management by way of closing down gates w.e.f. 27.01.2020, without complying in the provision of the Industrial Dispute Act 1947, for which the reference has been received from the appropriate government for its legal adjudication. She further stated at the bar that the aforesaid industrial dispute raised on her behalf stood amicably resolved by way of an amicable settlement. As per the settlement the respondent/company is ready and willing to make her the full and final payment towards lump sum compensation amounting to Rs. 75,000/- (Seventy Five Thousand Only), which the acceptable to her. The full and final settlement award shall be paid to her within one month from the date of the announcement of the award, failing which the respondent company shall be liable to pay penal interest @ 9% per annum. Nothing survives in the present petition. The above said statement was read over and explained to him which is duly accepted by him.

5. Thus, keeping in view that attendant facts and circumstances of the case *vis-a-vis* perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and she has been paid a sum of **Rs. 75,000/- (Rs. Seventy Five Thousand Only) through cheque No. 002695 dated 20.12.2022** as full and final settlement amount of the claim today in the Court. Therefore, the industrial dispute raised from the side of the petitioner arising out of reference no. 131/2021, stood amicably settled between the parties.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner**

has been fully & finally compensated by paying Rs. 75,000/- (Seventy Five Thousand Only) through cheque No. 002695 dated 20.12.2022. This a part, the petitioner is also entitled for his/her admissible legal dues as per law such as EPF, ESI etc. The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record i.e memorandum of settlement (PZ), identity card (PY), Settlement deed (PZ), full & final payment receipt along-with copy of cheque and resignation (PW), copy of Aadhar Card (PX), which shall form the integral part and parcel of this award.

7. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced : 02-01-2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 132 of 2021

Instituted on : 31-08-2021

Decided on : 02-01-2023

Sukhwinder Singh s/o Shri Sher Singh, r/o Village Ram Nagar (Kholi) P.O. Nanakpur,
Tehsil Kalka, District Panchkula, Haryana . . . *Petitioner.*

VERSUS

The Managing Director M/s Quixotic Health Care (Unit-II), Village Kalu Jhanda, P.O.
Barotiwala, Tehsil Baddi, District Solan, H.P. . . . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Ravi Tekta, Advocate

For respondent : Shri Dheeraj Bansal, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 17.12.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the services of Sh. Sukhwinder Singh s/o Shri Sher Singh, r/o Village Ram Nagar (Kholi), P.O. Nanakpur, Tehsil Kalka, District Panchkula,

Haryana by way of closing down the gate w.e.f. 27.01.2020, by the Managing Director, M/s Quixotic Health care (Unit-II) Village Kalu Jhanda, P.O. Barotiwala, Tehsil-Baddi, Distt. Solan, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including reinstatement, back wages, seniority, past service benefits and compensation the above aggrieved workman, is entitled to from the above employer/management?"

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri Ravi Tekta, Advocate has appeared on behalf of the petitioner whereas Shri Dheeraj Bansal, Advocate had appeared for respondent.

3. To the fore Shri S.L. Gupta, Manager, HR of respondent company has stated at the bar that the Industrial Dispute raised on behalf of the petitioner stood amicably resolved by way of an amicable settlement (PZ) and the respondent company has agreed to pay an amount of Rs. 85,000/- (Rs. Eighty Five Thousand only) towards full and final settlement amount of the claim within a period of one month from the date of the announcement of award failing which the respondent company shall be liable to pay penal interest @ 9% per annum. He has also placed on record memorandum of settlement (PZ), identity card (PY) and settlement deed (PZ). To this effect his statement recorded separately and placed on record.

4. Vide separate statement Shri Sukhvinder Singh, petitioner, has stated that he was engaged in the respondent company on 06.06.2011 and had worked as such till 27.01.2020. He had completed 240 working days in each calendar year. He raised an industrial dispute regarding the termination of his services by the respondent management by way of closing down gates w.e.f. 27.01.2020, without complying in the provision of the Industrial Dispute Act 1947, for which the reference has been received from the appropriate government for its legal adjudication. He further stated at the bar that the aforesaid industrial dispute raised on his behalf stood amicably resolved by way of an amicable settlement. As per the settlement the respondent/company is ready and willing to make him the full and final payment towards lump sum compensation amounting to Rs. 85,000/- (Eighty Five Thousand Only), which the acceptable to him. The full and final settlement award shall be paid to him within one month from the date of the announcement of the award, failing which the respondent company shall be liable to pay penal interest @ 9% per annum. Nothing survives in the present petition. The above said statement was read over and explained to him which is duly accepted by him.

5. Thus, keeping in view that attendant facts and circumstances of the case *vis-a-vis* perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and he has been paid a sum of Rs. 85,000/- (Rs. Eightty Five Thousand Only) through cheque No. 002706 dated 20.12.2022 as full and final settlement amount of the claim today in the Court. Therefore, the industrial dispute raised from the side of the petitioner arising out of reference no. 132/2021, stood amicably settled between the parties.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying Rs. 85,000/- (Eighty Five Thousand Only) through cheque No. 002706 dated 20.12.2022. This a part, the petitioner is also entitled for his/her admissible legal dues as per law such as EPF, ESI etc. The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record i.e memorandum of settlement (PZ), identity card (PY), Settlement deed (PZ), full & final payment

receipt along-with copy of cheque and resignation (PW), copy of Aadhar Card (PX), which shall form the integral part and parcel of this award.

7. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced : 02-01-2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 135 of 2021

Instituted on : 31-08-2021

Decided on : 02-01-2023

Khushi Ram s/o Shri Laxman Singh, r/o Village Karanpur, P.O. Nanakpur, Tehsil Kalka,
District Panchkula, Haryana. . *Petitioner.*

VERSUS

The Managing Director M/s Quixotic Health Care (Unit-II), Village Kalu Jhanda, P.O.
Barotiwala, Tehsil Baddi, District Solan, H.P. . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Ravi Tekta, Advocate

For respondent : Shri Dheeraj Bansal, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 17.12.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the services of Sh. Khushi Ram s/o Shri Laxman Singh, r/o Village Karanpur, P.O Nanakpur, Tehsil Kalka, District Panchkula, Haryana by way of closing down the gate w.e.f. 27.01.2020, by the Managing Director, M/s Quixotic Health care (Unit-II) Village Kalu Jhanda, P.O. Barotiwala, Tehsil Baddi, Distt. Solan, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including reinstatement, back wages, seniority, past service benefits and compensation the above aggrieved workman, is entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri Ravi Tekta, Advocate has appeared on behalf of the petitioner whereas Shri Dheeraj Bansal, Advocate had appeared for respondent.

3. To the fore Shri S. L. Gupta, Manager, HR of respondent company has stated at the bar that the Industrial Dispute raised on behalf of the petitioner stood amicably resolved by way of an amicable settlement (PZ) and the respondent company has agreed to pay an amount of Rs. 72,000/- (Rs. Seventy Two Thousand only) towards full and final settlement amount of the claim within a period of one month from the date of the announcement of award failing which the respondent company shall be liable to pay penal interest @ 9% per annum. He has also placed on record memorandum of settlement (PZ), identity card (PY) and settlement deed (PZ). To this effect his statement recorded separately and placed on record.

4. Vide separate statement Shri Khushi Ram, petitioner, has stated that he was engaged in the respondent company on 01.08.2012 and had worked as such till 27.01.2020. He had completed 240 working days in each calendar year. He raised an industrial dispute regarding the termination of his services by the respondent management by way of closing down gates w.e.f 27.01.2020, without complying in the provision of the Industrial Dispute Act 1947, for which the reference has been received from the appropriate government for its legal adjudication. He further stated at the bar that the aforesaid industrial dispute raised on his behalf stood amicably resolved by way of an amicable settlement. As per the settlement the respondent/company is ready and willing to make him the full and final payment towards lump sum compensation amounting to Rs. 72,000/- (Seventy Two Thousand Only), which the acceptable to him. The full and final settlement award shall be paid to him within one month from the date of the announcement of the award, failing which the respondent company shall be liable to pay penal interest @ 9% per annum. Nothing survives in the present petition. The above said statement was read over and explained to him which is duly accepted by him.

5. Thus, keeping in view that attendant facts and circumstances of the case vis- a -vis perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and he has been paid a sum of Rs. 72,000/- (Rs. Seventy Two Thousand Only) through cheque No. 002700 dated 20.12.2022 as full and final settlement amount of the claim today in the Court. Therefore, the industrial dispute raised from the side of the petitioner arising out of reference no. 135/2021, stood amicably settled between the parties.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying Rs. 72,000/- (Seventy Two Thousand Only) through cheque No. 002700 dated 20.12.2022. This a part, the petitioner is also entitled for his/her admissible legal dues as per law such as EPF, ESI etc. The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record i.e memorandum of settlement (PZ), identity card (PY), Settlement deed (PZ), full & final payment receipt along-with copy of cheque and resignation (PW), copy of Aadhar Card (PX), which shall form the integral part and parcel of this award.

7. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced : 02-01-2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 136 of 2021

Instituted on : 31-08-2021

Decided on : 02-01-2023

Jamil Mohammed s/o Shri Yasin Mohammed, r/o Village Karanpur, P.O. Nanakpur, Tehsil Kalka, District Panchkula, Haryana . *Petitioner.*

VERSUS

The Managing Director M/s Quixotic Health Care (Unit-II), Village Kalu Jhanda, P.O. Barotiwala, Tehsil Baddi, District Solan, H.P. . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Ravi Tekta, Advocate

For respondent : Shri Dheeraj Bansal, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 17.12.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the services of Sh. Jamil Mohammed s/o Shri Yasin Mohammed, r/o Village Karanpur, P.O. Nanakpur, Tehsil Kalka, District Panchkula, Haryana by way of closing down the gate w.e.f. 27.01.2020, by the Managing Director, M/s Quixotic Health care (Unit-II) Village Kalu Jhanda, P.O. Barotiwala, Tehsil Baddi, Distt. Solan, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including reinstatement, back wages, seniority, past service benefits and compensation the above aggrieved workman, is entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri Ravi Tekta, Advocate has appeared on behalf of the petitioner whereas Shri Dheeraj Bansal, Advocate had appeared for respondent.

3. To the fore Shri S.L. Gupta, Manager, HR of respondent company has stated at the bar that the Industrial Dispute raised on behalf of the petitioner stood amicably resolved by way of an amicable settlement (PZ) and the respondent company has agreed to pay an amount of Rs. 90,000/- (Rs. Ninety Thousand only) towards full and final settlement amount of the claim within a period of one month from the date of the announcement of award failing which the respondent company shall be liable to pay penal interest @ 9% per annum. He has also placed on record memorandum of settlement (PZ), identity card (PY) and settlement deed (PZ). To this effect his statement recorded separately and placed on record.

4. Vide separate statement Shri Jamil Mohammed, petitioner, has stated that he was engaged in the respondent company on 11.03.2011 and had worked as such till 27.01.2020. He had completed 240 working days in each calendar year. He raised an industrial dispute regarding the termination of his services by the respondent management by way of closing down gates w.e.f 27.01.2020, without complying in the provision of the Industrial Dispute Act 1947, for which the reference has been received from the appropriate government for its legal adjudication. He further stated at the bar that the aforesaid industrial dispute raised on his behalf stood amicably resolved by way of an amicable settlement. As per the settlement the respondent/company is ready and willing to make him the full and final payment towards lump sum compensation amounting to Rs. 90,000/- (Ninety Thousand Only), which the acceptable to him. The full and final settlement award shall be paid to him within one month from the date of the announcement of the award, failing which the respondent company shall be liable to pay penal interest @ 9% per annum. Nothing survives in the present petition. The above said statement was read over and explained to him which is duly accepted by him.

5. Thus, keeping in view that attendant facts and circumstances of the case *vis-a-vis* perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and he has been paid a sum of Rs. 90,000/- (Rs. Ninety Thousand Only) through cheque No. 002702 dated 20.12.2022 as full and final settlement amount of the claim today in the Court. Therefore, the industrial dispute raised from the side of the petitioner arising out of reference no. 136/2021, stood amicably settled between the parties.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying Rs. 90,000/- (Ninety Thousand Only) through cheque No. 002702 dated 20.12.2022. This a part, the petitioner is also entitled for his/her admissible legal dues as per law such as EPF, ESI etc. The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record i.e memorandum of settlement (PZ), identity card (PY), Settlement deed (PZ), full & final payment receipt along-with copy of cheque and resignation (PW), copy of Aadhar Card (PX), which shall form the integral part and parcel of this award.

7. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced : 02-01-2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

ReferenceNumber : 137 of 2021
Instituted on : 31-08-2021
Decided on : 02-01-2023

Balvinder Kaur w/o Shri Baljinder Singh, r/o Village Karanpur, P.O. Nanakpur, Tehsil Kalka, District Panchkula, Haryana . .Petitioner.

VERSUS

The Managing Director M/s Quixotic Health Care (Unit-II), Village Kalu Jhanda, P.O. Barotiwala, Tehsil Baddi, District Solan, H.P. ...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Ravi Tekta, Advocate

For respondent : Shri Dheeraj Bansal, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 17.12.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the services of Smt. Balvinder Kaur w/o Shri Baljinder Singh, r/o Village Karanpur, P.O Nanakpur, Tehsil Kalka, District Panchkula, Haryana by way of closing down the gate w.e.f. 27.01.2020, by the Managing Director, M/s Quixotic Health care (Unit-II) Village Kalu Jhanda, P.O. Barotiwala, Tehsil Baddi, Distt. Solan, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including reinstatement, back wages, seniority, past service benefits and compensation the above aggrieved workman, is entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri Ravi Tekta, Advocate has appeared on behalf of the petitioner whereas Shri Dheeraj Bansal, Advocate had appeared for respondent.

3. To the fore Shri S.L. Gupta, Manager, HR of respondent company has stated at the bar that the Industrial Dispute raised on behalf of the petitioner stood amicably resolved by way of an amicable settlement (PZ) and the respondent company has agreed to pay an amount of Rs. 75,000/- (Rs. Seventy Five Thousand only) towards full and final settlement amount of the claim within a period of one month from the date of the announcement of award failing which the respondent company shall be liable to pay penal interest @ 9% per annum. He has also placed on record memorandum of settlement (PZ), identity card (PY) and settlement deed (PZ). To this effect his statement recorded separately and placed on record.

4. Vide separate statement Smt Balwinder Kaur, petitioner, has stated that she was engaged in the respondent company on 11.11.2011 and had worked as such till 27.01.2020. She had completed 240 working days in each calendar year. She raised an industrial dispute regarding the termination of her services by the respondent management by way of closing down gates w.e.f 27.01.2020, without complying in the provision of the Industrial Dispute Act 1947, for which the reference has been received from the appropriate government for its legal adjudication. She further stated at the bar that the aforesaid industrial dispute raised on her behalf stood amicably resolved by way of an amicable settlement. As per the settlement the respondent/company is ready and willing to make her the full and final payment towards lump sum compensation amounting to Rs. 75,000/-

(Seventy Five Thousand Only), which the acceptable to her. The full and final settlement award shall be paid to her within one month from the date of the announcement of the award, failing which the respondent company shall be liable to pay penal interest @ 9% per annum. Nothing survives in the present petition. The above said statement was read over and explained to him which is duly accepted by him.

5. Thus, keeping in view that attendant facts and circumstances of the case vis- a -vis perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and she has been paid a sum of Rs. 75,000/- (Rs. Seventy Five Thousand Only) through cheque No. 002693 dated 20.12.2022 as full and final settlement amount of the claim today in the Court. Therefore, the industrial dispute raised from the side of the petitioner arising out of reference no.137/2021, stood amicably settled between the parties.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying Rs. 75,000/- (Seventy Five Thousand Only) through cheque No. 002696 dated 20.12.2022. This a part, the petitioner is also entitled for his/her admissible legal dues as per law such as EPF, ESI etc. The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record i.e memorandum of settlement (PZ), identity card (PY), Settlement deed (PZ), full & final payment receipt along-with copy of cheque and resignation (PW), copy of Aadhar Card (PX), which shall form the integral part and parcel of this award.

7. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced : 02-01-2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 138 of 2021

Instituted on : 31-08-2021

Decided on : 02-01-2023

Nebo Devi w/o Late Shri Nand Lal, r/o VPO Nanakpur, Tehsil Kalka, District Panchkula, Haryana. . .Petitioner.

VERSUS

The Managing Director M/s Quixotic Health Care (Unit-II), Village KaluJhanda, P.O Barotiwala, Tehsil Baddi, District Solan, H.P. . .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Ravi Tekta, Advocate

For respondent : Shri Dheeraj Bansal, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 17.12.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the services of Smt. Nebo Devi, w/o Late Shri Nand Lal, r/o VPO Nanakpur, Tehsil Kalka, District Panchkula, Haryana by way of closing down the gate w.e.f. 27.01.2020, by the Managing Director, M/s Quixotic Health care (Unit-II) Village Kalu Jhanda, P.O. Barotiwala, Tehsil Baddi, Distt. Solan, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including reinstatement, back wages, seniority, past service benefits and compensation the above aggrieved workman, is entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri Ravi Tekta, Advocate has appeared on behalf of the petitioner whereas Shri Dheeraj Bansal, Advocate had appeared for respondent.

3. To the fore Shri S. L. Gupta, Manager, HR of respondent company has stated at the bar that the Industrial Dispute raised on behalf of the petitioner stood amicably resolved by way of an amicable settlement (PZ) and the respondent company has agreed to pay an amount of Rs. 70,000/- (Rs. Seventy Thousand only) towards full and final settlement amount of the claim within a period of one month from the date of the announcement of award failing which the respondent company shall be liable to pay penal interest @ 9% per annum. He has also placed on record memorandum of settlement (PZ), identity card (PY) and settlement deed (PZ). To this effect his statement recorded separately and placed on record.

4. Vide separate statement Smt Nabo Devi, petitioner, has stated that she was engaged in the respondent company on 21.01.2013 and had worked as such till 27.01.2020. She had completed 240 working days in each calendar year. She raised an industrial dispute regarding the termination of her services by the respondent management by way of closing down gates w.e.f 27.01.2020, without complying in the provision of the Industrial Dispute Act 1947, for which the reference has been received from the appropriate government for its legal adjudication. She further stated at the bar that the aforesaid industrial dispute raised on her behalf stood amicably resolved by way of an amicable settlement. As per the settlement the respondent/company is ready and willing to make her the full and final payment towards lump sum compensation amounting to Rs. 70,000/- (Seventy Thousand Only), which the acceptable to her. The full and final settlement award shall be paid to him within one month from the date of the announcement of the award, failing which the respondent company shall be liable to pay penal interest @ 9% per annum. Nothing survives in the present petition. The above said statement was read over and explained to him which is duly accepted by him.

5. Thus, keeping in view that attendant facts and circumstances of the case vis- a -vis perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by

the petitioner and she has been paid a sum of Rs. 70,000/- (Rs. Seventy Thousand Only) through cheque No. 002692 dated 20.12.2022 as full and final settlement amount of the claim today in the Court. Therefore, the industrial dispute raised from the side of the petitioner arising out of reference no.138/2021, stood amicably settled between the parties.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying Rs. 70,000/- (Seventy Thousand Only) through cheque No. 002692 dated 20.12.2022. This a part, the petitioner is also entitled for his/her admissible legal dues as per law such as EPF, ESI etc. The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record i.e memorandum of settlement (PZ), identity card (PY), Settlement deed (PZ), full & final payment receipt along-with copy of cheque and resignation (PW), copy of Aadhar Card (PX), which shall form the integral part and parcel of this award.

7. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced : 02-01-2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

ReferenceNumber : 139 of 2021

Instituted on : 31-08-2021

Decided on : 02-01-2023

Amarjeet Singh s/o Shri Kartar Singh, r/o Village Karanpur, P.O. Nanakpur, Tehsil Kalka,
District Panchkula, Haryana . . . *Petitioner.*

VERSUS

The Managing Director M/s Quixotic Health Care (Unit-II), Village Kalu Jhanda, P.O.
Barotiwala, Tehsil Baddi, District Solan, H.P. . . . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Ravi Tekta, Advocate

For respondent : Shri Dheeraj Bansal, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 17.12.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the services of Sh. Amarjeet Singh, S/o Shri Kartar Singh, r/o Village Karanpur, P.O. Nanakpur, Tehsil Kalka, District Panchkula, Haryana by way of closing down the gate w.e.f. 27.01.2020, by the Managing Director, M/s Quixotic Health care (Unit-II) Village Kalu Jhanda, P.O. Barotiwala, Tehsil- Baddi, Distt. Solan, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including reinstatement, back wages, seniority, past service benefits and compensation the above aggrieved workman, is entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri Ravi Tekta, Advocate has appeared on behalf of the petitioner whereas Shri Dheeraj Bansal, Advocate had appeared for respondent.

3. To the fore Shri S.L. Gupta, Manager, HR of respondent company has stated at the bar that the Industrial Dispute raised on behalf of the petitioner stood amicably resolved by way of an amicable settlement (PZ) and the respondent company has agreed to pay an amount of Rs. 1,40,000/- (One Lakhs Forty Thousand Only) towards full and final settlement amount of the claim within a period of one month from the date of the announcement of award failing which the respondent company shall be liable to pay penal interest @ 9% per annum. He has also placed on record memorandum of settlement (PZ), identity card (PY) and settlement deed (PZ). To this effect his statement recorded separately and placed on record.

4. Vide separate statement Shri Amar Jeet Singh, petitioner, has stated that he was engaged in the respondent company on 21.12.2009 and had worked as such till 27.01.2020. He had completed 240 working days in each calendar year. He raised an industrial dispute regarding the termination of his services by the respondent management by way of closing down gates w.e.f 27.01.2020, without complying in the provision of the Industrial Dispute Act 1947, for which the reference has been received from the appropriate government for its legal adjudication. He further stated at the bar that the aforesaid industrial dispute raised on his behalf stood amicably resolved by way of an amicable settlement. As per the settlement the respondent/company is ready and willing to make him the full and final payment towards lump sum compensation amounting to Rs. 1,40,000/- (One Lakhs Forty Thousand Only), which the acceptable to him. The full and final settlement award shall be paid to him within one month from the date of the announcement of the award, failing which the respondent company shall be liable to pay penal interest @ 9% per annum. Nothing survives in the present petition. The above said statement was read over and explained to him which is duly accepted by him.

5. Thus, keeping in view that attendant facts and circumstances of the case *vis-a-vis* perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and he has been paid a sum of Rs. 1,40,000/- (One Lakhs Forty Thousand Only) through cheque No. 002686 dated 20.12.2022 as full and final settlement amount of the claim today in the Court. Therefore, the industrial dispute raised from the side of the petitioner arising out of reference no. 139/2021, stood amicably settled between the parties.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been

fully & finally compensated by paying Rs. 1,40,000/- (One Lakhs Forty Thousand Only) through cheque No. 002686 dated 20.12.2022. This a part, the petitioner is also entitled for his/her admissible legal dues as per law such as EPF, ESI etc. The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record i.e memorandum of settlement (PZ), identity card (PY), Settlement deed (PZ), full & final payment receipt along-with copy of cheque and resignation (PW), copy of Aadhar Card (PX), which shall form the integral part and parcel of this award.

7. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced : 02-01-2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 140 of 2021

Instituted on : 01-09-2021

Decided on : 02-01-2023

Gurbachan Singh s/o Shri Babu Ram, r/o Village & P.O.Nanakpur, Tehsil Kalka, District Panchkula, Haryana. *. .Petitioner.*

VERSUS

The Managing Director M/s Quixotic Health Care (Unit-II), Village Kalu Jhanda, P.O. Barotiwala, Tehsil Baddi, District Solan, H.P. *. .Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Ravi Tekta, Advocate

For respondent : Shri Dheeraj Bansal, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 23.12.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the services of Sh. Gurbachan Singh s/o Shri Babu Ram, r/o Village & P.O Nanakpur, Tehsil Kalka, District Panchkula, Haryana by way of closing

down the gate w.e.f. 27.01.2020, by the Managing Director, M/s Quixotic Health care (Unit-II) Village Kalu Jhanda, P.O Barotiwala, Tehsil- Baddi, Distt. Solan, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including reinstatement, back wages, seniority, past service benefits and compensation the above aggrieved workman, is entitled to from the above employer/management?"

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri Ravi Tekta, Advocate has appeared on behalf of the petitioner whereas Shri Dheeraj Bansal, Advocate had appeared for respondent.

3. To the fore Shri S.L. Gupta, Manager, HR of respondent company has stated at the bar that the Industrial Dispute raised on behalf of the petitioner stood amicably resolved by way of an amicable settlement (PZ) and the respondent company has agreed to pay an amount of Rs. 85,000/- (Rs. Eighty Five Thousand only) towards full and final settlement amount of the claim within a period of one month from the date of the announcement of award failing which the respondent company shall be liable to pay penal interest @ 9% per annum. He has also placed on record memorandum of settlement (PZ), identity card (PY) and settlement deed (PZ). To this effect his statement recorded separately and placed on record.

4. Vide separate statement Shri Gurbachan Singh, petitioner, has stated that he was engaged in the respondent company on 06.06.2011 and had worked as such till 27.01.2020. He had completed 240 working days in each calendar year. He raised an industrial dispute regarding the termination of his services by the respondent management by way of closing down gates w.e.f. 27.01.2020, without complying in the provision of the Industrial Dispute Act 1947, for which the reference has been received from the appropriate government for its legal adjudication. He further stated at the bar that the aforesaid industrial dispute raised on his behalf stood amicably resolved by way of an amicable settlement. As per the settlement the respondent/company is ready and willing to make him the full and final payment towards lump sum compensation amounting to Rs. 85,000/- (Eighty Five Thousand Only), which is acceptable to him. The full and final settlement award shall be paid to him within one month from the date of the announcement of the award, failing which the respondent company shall be liable to pay penal interest @ 9% per annum. Nothing survives in the present petition. The above said statement was read over and explained to him which is duly accepted by him.

5. Thus, keeping in view that attendant facts and circumstances of the case vis- a -vis perusal of the case record manifestly and conclusively goes to demonstrate that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and he has been paid a sum of Rs. 85,000/- (Rs. Eighty Five Thousand Only) through cheque No. 002698 dated 20.12.2022 as full and final settlement amount of the claim today in the Court. Therefore, the industrial dispute raised from the side of the petitioner arising out of reference no. 140/2021, stood amicably settled between the parties.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying Rs. 85,000/- (Eighty Five Thousand Only) through cheque No. 002698 dated 20.12.2022. This a part, the petitioner is also entitled for his/her admissible legal dues as per law such as EPF, ESI etc. The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record i.e memorandum of settlement (PZ), identity card (PY), Settlement deed (PZ), full & final payment

receipt along-with copy of cheque and resignation (PW), copy of Aadhar Card (PX), which shall form the integral part and parcel of this award.

7. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced : 02-01-2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 141 of 2021
Instituted on : 01-09-2021
Decided on : 02-01-2023

Jaspal s/o Shri Keso Ram, r/o Village Karanpur, P.O. Nanakpur, Tehsil Kalka, District Panchkula, Haryana . .*Petitioner.*

VERSUS

The Managing Director M/s Quixotic Health Care (Unit-II), Village Kalu Jhanda, P.O. Barotiwala, Tehsil Baddi, District Solan, H.P. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Ravi Tekta, Advocate
For respondent : Shri Dheeraj Bansal, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 23.12.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the services of Sh. Jaspal s/o Shri Keso Ram, r/o Village Karanpur, P.O. Nanakpur, Tehsil Kalka, District Panchkula, Haryana by way of closing down the gate w.e.f. 27.01.2020, by the Managing Director, M/s Quixotic Health care (Unit-II) Village Kalu Jhanda, P.O. Barotiwala, Tehsil- Baddi, Distt. Solan,H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including reinstatement, back wages, seniority, past service benefits and compensation the above aggrieved workman, is entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri Ravi Tekta, Advocate has appeared on behalf of the petitioner whereas Shri Dheeraj Bansal, Advocate had appeared for respondent.

3. To the fore Shri S. L. Gupta, Manager, HR of respondent company has stated at the bar that the Industrial Dispute raised on behalf of the petitioner stood amicably resolved by way of an amicable settlement (PZ) and the respondent company has agreed to pay an amount of Rs. 80,000/- (Rs. Eighty Thousand only) towards full and final settlement amount of the claim within a period of one month from the date of the announcement of award failing which the respondent company shall be liable to pay penal interest @ 9% per annum. He has also placed on record memorandum of settlement (PZ), identity card (PY) and settlement deed (PZ). To this effect his statement recorded separately and placed on record.

4. Vide separate statement Shri Jaspal Singh, petitioner, has stated that he was engaged in the respondent company on 11.03.2011 and had worked as such till 27.01.2020. He had completed 240 working days in each calendar year. He raised an industrial dispute regarding the termination of his services by the respondent management by way of closing down gates w.e.f 27.01.2020, without complying in the provision of the industrial dispute act 1947, for which the reference has been received from the appropriate government for its legal adjudication. He further stated at the bar that the aforesaid industrial dispute raised on his behalf stood amicably resolved by way of an amicable settlement. As per the settlement the respondent/company is ready and willing to make him the full and final payment towards lump sum compensation amounting to Rs. 80,000/- (Eighty Thousand Only), which is acceptable to him. The full and final settlement award shall be paid to him within one month from the date of the announcement of the award, failing which the respondent company shall be liable to pay penal interest @ 9% per annum. Nothing survives in the present petition. The above said statement was read over and explained to him which is duly accepted by him.

5. Thus, keeping in view that attendant facts and circumstances of the case vis-a-vis perusal of the case record manifestly and conclusively goes to demonstrate that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and he has been paid a sum of **Rs. 80,000/- (Rs. Eighty Thousand Only) through cheque No. 002685 dated 20.12.2022** as full and final settlement amount of the claim today in the Court. Therefore, the industrial dispute raised from the side of the petitioner arising out of reference no.141/2021, stood amicably settled between the parties.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying Rs. 80,000/- (Eighty Thousand Only) through cheque No. 002685 dated 20.12.2022.** This a part, the petitioner is also entitled for his/her admissible legal dues as per law such as EPF, ESI etc. The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record i.e memorandum of settlement (PZ), identity card (PY), Settlement deed (PZ), full & final payment receipt along-with copy of cheque and resignation (PW), copy of Aadhar Card (PX), which shall form the integral part and parcel of this award.

7. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced : 02-01-2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

ReferenceNumber : 142 of 2021

Instituted on : 01-09-2021

Decided on : 02-01-2023

Jasbir Singh s/o Shri Lajja Ram, r/o Village Nandpur, P.O. Mallah, Tehsil Kalka, District Panchkula, Haryana . .Petitioner.

VERSUS

The Managing Director M/s Quixotic Health Care (Unit-II), Village Kalu Jhanda, P.O. Barotiwala, Tehsil Baddi, District Solan, H.P. . .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Ravi Tekta, Advocate

For respondent : Shri Dheeraj Bansal, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 23.12.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the services of Sh. Jasbir Singh s/o Shri Lajja Ram, r/o Village Nandpur, P.O. Mallah, Tehsil Kalka, District Panchkula, Haryana by way of closing down the gate w.e.f. 27.01.2020, by the Managing Director, M/s Quixotic Health care (Unit-II) Village Kalu Jhanda, P.O Barotiwala, Tehsil- Baddi, Distt. Solan,H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including reinstatement, back wages, seniority, past service benefits and compensation the above aggrieved workman, is entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri Ravi Tekta, Advocate has appeared on behalf of the petitioner whereas Shri Dheeraj Bansal, Advocate had appeared for respondent.

3. To the fore Shri S. L. Gupta, Manager, HR of respondent company has stated at the bar that the Industrial Despute raised on behalf of the petitioner stood amicably resolved by way of an amicable settlement (PZ) and the respondent company has agreed to pay an amount of Rs. 85,000/- (Rs. Eighty Five Thousand only) towards full and final settlement amount of the claim within a period of one month from the date of the announcement of award failing which the respondent company shall be liable to pay penal interest @ 9% per annum. He has also placed on record memorandum of settlement (PZ), identity card (PY) and settlement deed (PZ). To this effect his statement recorded separately and placed on record.

4. Vide separate statement Shri Jasbir Singh, petitioner, has stated that he was engaged in the respondent company on 04.02.2010 and had worked as such till 27.01.2020. He had completed

240 working days in each calendar year. He raised an industrial dispute regarding the termination of his services by the respondent management by way of closing down gates w.e.f 27.01.2020, without complying in the provision of the Industrial Dispute Act 1947, for which the reference has been received from the appropriate government for its legal adjudication. He further stated at the bar that the aforesaid industrial dispute raised on his behalf stood amicably resolved by way of an amicable settlement. As per the settlement the respondent/company is ready and willing to make him the full and final payment towards lump sum compensation amounting to Rs. 85,000/- (Eighty Five Thousand Only), which the acceptable to him. The full and final settlement award shall be paid to him within one month from the date of the announcement of the award, failing which the respondent company shall be liable to pay penal interest @ 9% per annum. Nothing survives in the present petition. The above said statement was read over and explained to him which is duly accepted by him.

5. Thus, keeping in view that attendant facts and circumstances of the case *vis-a-vis* perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and he has been paid a sum of Rs. 85,000/- (Rs. Eighty Five Thousand Only) through cheque No. 002704 dated 20.12.2022 as full and final settlement amount of the claim today in the Court. Therefore, the industrial dispute raised from the side of the petitioner arising out of reference no. 142/2021, stood amicably settled between the parties.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying Rs. 85,000/- (Eighty Five Thousand Only) through cheque No. 002704 dated 20.12.2022. This a part, the petitioner is also entitled for his/her admissible legal dues as per law such as EPF, ESI etc. The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record i.e memorandum of settlement (PZ), identity card (PY), Settlement deed (PZ), full & final payment receipt along-with copy of cheque and resignation (PW), copy of Aadhar Card (PX), which shall form the integral part and parcel of this award.

7. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced : 02-01-2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 143 of 2021

Instituted on : 01-09-2021

Decided on : 02-01-2023

Jaswant Singh s/o Shri Sucha Singh, r/o Village Karanpur, P.O. Nanakpur, Tehsil Kalka, District Panchkula, Haryana . .Petitioner.

VERSUS

The Managing Director M/s Quixotic Health Care (Unit-II), Village Kalu Jhanda, P.O. Barotiwala, Tehsil Baddi, District Solan, H.P. . .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Ravi Tekta, Advocate

For respondent : Shri Dheeraj Bansal, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 23.12.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the services of Sh. Jaswant Singh s/o Shri Sucha Singh, r/o Village Karanpur, P.O. Nanakpur, Tehsil Kalka, District Panchkula, Haryana by way of closing down the gate w.e.f. 27.01.2020, by the Managing Director, M/s Quixotic Health care (Unit-II) Village Kalu Jhanda, P.O. Barotiwala, Tehsil- Baddi, Distt. Solan,H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including reinstatement, back wages, seniority, past service benefits and compensation the above aggrieved workman, is entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri Ravi Tekta, Advocate has appeared on behalf of the petitioner whereas Shri Dheeraj Bansal, Advocate had appeared for respondent.

3. To the fore Shri S.L. Gupta, Manager, HR of respondent company has stated at the bar that the Industrial Dispute raised on behalf of the petitioner stood amicably resolved by way of an amicable settlement (PZ) and the respondent company has agreed to pay an amount of Rs. 75,000/- (Rs. Seventy Five Thousand only) towards full and final settlement amount of the claim within a period of one month from the date of the announcement of award failing which the respondent company shall be liable to pay penal interest @ 9% per annum. He has also placed on record memorandum of settlement (PZ), identity card (PY) and settlement deed (PZ). To this effect his statement recorded separately and placed on record.

4. Vide separate statement Shri Jaswant Singh, petitioner, has stated that he was engaged in the respondent company on 04.05.2013 and had worked as such till 27.01.2020. He had completed 240 working days in each calendar year. He raised an industrial dispute regarding the termination of his services by the respondent management by way of closing down gates w.e.f 27.01.2020, without complying in the provision of the Industrial Dispute Act 1947, for which the reference has been received from the appropriate government for its legal adjudication. He further stated at the bar that the aforesaid industrial dispute raised on his behalf stood amicably resolved by way of an amicable settlement. As per the settlement the respondent/company is ready and willing to make him the full and final payment towards lump sum compensation amounting to Rs. 75,000/- (Seventy Five Thousand Only), which the acceptable to him. The full and final settlement award

shall be paid to him within one month from the date of the announcement of the award, failing which the respondent company shall be liable to pay penal interest @ 9% per annum. Nothing survives in the present petition. The above said statement was read over and explained to him which is duly accepted by him.

5. Thus, keeping in view that attendant facts and circumstances of the case *vis-a-vis* perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and he has been paid a sum of Rs. 75,000/- (Rs. Seventy Five Thousand Only) through cheque No. 002687 dated 20.12.2022 as full and final settlement amount of the claim today in the Court. Therefore, the industrial dispute raised from the side of the petitioner arising out of reference no. 143/2021, stood amicably settled between the parties.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying Rs. 75,000/- (Seventy Five Thousand Only) through cheque No. 002687 dated 20.12.2022. This a part, the petitioner is also entitled for his/her admissible legal dues as per law such as EPF, ESI etc. The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record i.e memorandum of settlement (PZ), identity card (PY), Settlement deed (PZ), full & final payment receipt along-with copy of cheque and resignation (PW), copy of Aadhar Card (PX), which shall form the integral part and parcel of this award.

7. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced : 02-01-2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 145 of 2021.

Instituted on : 01.09.2021.

Decided on : 02.01.2023.

Lata Devi w/o Shri Kamal Chand, r/o Village Kalu Jhanda, P.O. Mandhala, District Solan,
H.P. *Petitioner.*

VERSUS

The Managing Director M/s Quixotic Health Care (Unit-II), Village Kalu Jhanda, P.O.
Barotiwalla, Tehsil Baddi, District Solan, H.P. *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Ravi Tekta, Advocate

For respondent : Shri Dheeraj Bansal, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 23.12.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the services of Smt.Lata Devi w/o Shri Kamal Chand, R/o Village Kalu Jhanda, P.O. Mandhala, District Solan, HP. byway of closing down the gate w.e.f. 27.01.2020, by the Managing Director, M/s Quixotic Health care (Unit-II) Village Kalu Jhanda, P.O. Barotiwala, Tehsil- Baddi, Distt. Solan, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including reinstatement, back wages, seniority, past service benefits and compensation the above aggrieved workman, is entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri Ravi Tekta, Advocate has appeared on behalf of the petitioner whereas Shri Dheeraj Bansal, Advocate had appeared for respondent.

3. To the fore Shri S. L. Gupta, Manager, HR of respondent company has stated at the bar that the Industrial Dispute raised on behalf of the petitioner stood amicably resolved by way of an amicable settlement (PZ) and the respondent company has agreed to pay an amount of Rs. 70,000/- (Rs. Seventy Thousand only) towards full and final settlement amount of the claim within a period of one month from the date of the announcement of award failing which the respondent company shall be liable to pay penal interest @ 9% per annum. He has also placed on record memorandum of settlement (PZ), identity card (PY) and settlement deed (PZ). To this effect his statement recorded separately and placed on record.

4. Vide separate statement SmtLata Devi, petitioner, has stated that she was engaged in the respondent company on 01.10.2012 and had worked as such till 27.01.2020. She had completed 240 working days in each calendar year. She raised an industrial dispute regarding the termination of her services by the respondent management by way of closing down gates w.e.f 27.01.2020, without complying in the provision of the Industrial Dispute Act 1947, for which the reference has been received from the appropriate government for its legal adjudication. She further stated at the bar that the aforesaid industrial dispute raised on her behalf stood amicably resolved by way of an amicable settlement. As per the settlement the respondent/company is ready and willing to make her the full and final payment towards lump sum compensation amounting to Rs. 70,000/- (Seventy Thousand Only), which the acceptable to her. The full and final settlement award shall be paid to her within one month from the date of the announcement of the award, failing which the respondent company shall be liable to pay penal interest @ 9% per annum. Nothing survives in the present petition. The above said statement was read over and explained to him which is duly accepted by him.

5. Thus, keeping in view that attendant facts and circumstances of the case *vis-a-vis* perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and she has been paid a sum of Rs. 70,000/- (Rs. Seventy Thousand Only) through cheque No. 002691 dated 20.12.2022 as full and final settlement amount of the claim today in the

Court. Therefore, the industrial dispute raised from the side of the petitioner arising out of reference no.145/2021, stood amicably settled between the parties.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying Rs. 70,000/- (Seventy Thousand Only) through cheque No. 002691 dated 20.12.2022. This a part, the petitioner is also entitled for his/her admissible legal dues as per law such as EPF, ESI etc. The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record i.e memorandum of settlement (PZ), identity card (PY), Settlement deed (PZ), full & final payment receipt along-with copy of cheque and resignation (PW), copy of Aadhar Card (PX), which shall form the integral part and parcel of this award.

7. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced : 02-01-2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 147 of 2021

Instituted on : 05-05-2021

Decided on : 02-01-2023

Krishan Chand s/o Shri Gurbaksh, r/o Village Sukhomajra, P.O. Basola, Tehsil Kalka,
District Panchkula, Haryana . .Petitioner.

VERSUS

The Managing Director M/s Quixotic Health Care (Unit-II), Village Kalu Jhanda, P.O.
Barotiwalla, Tehsil Baddi, District Solan, H.P. . .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Ravi Tekta, Advocate

For respondent : Shri Dheeraj Bansal, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 23.12.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the services of Sh. Krishan Chand s/o Shri Gurbaksh, r/o Village Sukhomajra P.O. Basola, Tehsil Kalka, District Panchkula, Haryana by way of closing down the gate w.e.f. 27.01.2020, by the Managing Director, M/s Quixotic Health care (Unit-II) Village Kalu Jhanda, P.O. Barotiwalla, Tehsil- Baddi, Distt. Solan, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including reinstatement, back wages, seniority, past service benefits and compensation the above aggrieved workman, is entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri Ravi Tekta, Advocate has appeared on behalf of the petitioner whereas Shri Dheeraj Bansal, Advocate had appeared for respondent.

3. To the fore Shri S. L. Gupta, Manager, HR of respondent company has stated at the bar that the Industrial Dispute raised on behalf of the petitioner stood amicably resolved by way of an amicable settlement (PZ) and the respondent company has agreed to pay an amount of Rs. 90,000/- (Rs. Ninety Thousand only) towards full and final settlement amount of the claim within a period of one month from the date of the announcement of award failing which the respondent company shall be liable to pay penal interest @ 9% per annum. He has also placed on record memorandum of settlement (PZ), identity card (PY) and settlement deed (PZ). To this effect his statement recorded separately and placed on record.

4. Vide separate statement Shri Krishan Chand, petitioner, has stated that he was engaged in the respondent company on 01.04.2010 and had worked as such till 27.01.2020. He had completed 240 working days in each calendar year. He raised an industrial dispute regarding the termination of his services by the respondent management by way of closing down gates w.e.f. 27.01.2020, without complying in the provision of the Industrial Dispute Act 1947, for which the reference has been received from the appropriate government for its legal adjudication. He further stated at the bar that the aforesaid industrial dispute raised on his behalf stood amicably resolved by way of an amicable settlement. As per the settlement the respondent/company is ready and willing to make him the full and final payment towards lump sum compensation amounting to Rs. 90,000/- (Ninety Thousand Only), which the acceptable to him. The full and final settlement award shall be paid to him within one month from the date of the announcement of the award, failing which the respondent company shall be liable to pay penal interest @ 9% per annum. Nothing survives in the present petition. The above said statement was read over and explained to him which is duly accepted by him.

5. Thus, keeping in view that attendant facts and circumstances of the case vis- a -vis perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and he has been paid a sum of Rs. 90,000/- (Rs. Ninety Thousand Only) through cheque No. 002701 dated 20.12.2022 as full and final settlement amount of the claim today in the Court. Therefore, the industrial dispute raised from the side of the petitioner arising out of reference no. 147/2021, stood amicably settled between the parties.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying Rs. 90,000/- (Ninety Thousand Only) through cheque No. 002701 dated 20.12.2022. This a part, the petitioner is also entitled for his/her admissible legal dues as per law such as EPF, ESI etc. The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record i.e

memorandum of settlement (PZ), identity card (PY), Settlement deed (PZ), full & final payment receipt along-with copy of cheque and resignation (PW), copy of Aadhar Card (PX), which shall form the integral part and parcel of this award.

7. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced : 02-01-2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 150 of 2021
Instituted on : 01-09-2021
Decided on : 02-01-2023

Gurmeet Singh s/o Shri Sucha Singh, r/o Village Kishanpura, P.O. Nanakpur, Tehsil Kalka,
District Panchkula, Haryana . *Petitioner.*

VERSUS

The Managing Director M/s Quixotic Health Care (Unit-II), Village Kalu Jhanda, P.O.
Barotiwala, Tehsil Baddi, District Solan, H.P. . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Ravi Tekta, Advocate
For respondent : Shri Dheeraj Bansal, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 23.12.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the services of Sh. Gurmeet Singh s/o Shri Sucha Singh, r/o Village Kishanpura, P.O. Nanakpur, Tehsil Kalka, District Panchkula, Haryana by way of closing down the gate w.e.f. 27.01.2020, by the Managing Director, M/s Quixotic Health care (Unit-II) Village Kalu Jhanda, P.O Barotiwala, Tehsil- Baddi, Distt. Solan,H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including reinstatement, back wages, seniority, past service benefits and compensation the above aggrieved workman, is entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri Ravi Tekta, Advocate has appeared on behalf of the petitioner whereas Shri Dheeraj Bansal, Advocate had appeared for respondent.

3. To the fore Shri S.L. Gupta, Manager, HR of respondent company has stated at the bar that the Industrial Dispute raised on behalf of the petitioner stood amicably resolved by way of an amicable settlement (PZ) and the respondent company has agreed to pay an amount of Rs. 80,000/- (Rs. Eighty Thousand only) towards full and final settlement amount of the claim within a period of one month from the date of the announcement of award failing which the respondent company shall be liable to pay penal interest @ 9% per annum. He has also placed on record memorandum of settlement (PZ), identity card (PY) and settlement deed (PZ). To this effect his statement recorded separately and placed on record.

4. Vide separate statement Shri Gurmeet Singh, petitioner, has stated that he was engaged in the respondent company on 01.03.2011 and had worked as such till 27.01.2020. He had completed 240 working days in each calendar year. He raised an industrial dispute regarding the termination of his services by the respondent management by way of closing down gates w.e.f 27.01.2020, without complying in the provision of the Industrial Dispute Act 1947, for which the reference has been received from the appropriate government for its legal adjudication. He further stated at the bar that the aforesaid industrial dispute raised on his behalf stood amicably resolved by way of an amicable settlement. As per the settlement the respondent/company is ready and willing to make him the full and final payment towards lump sum compensation amounting to Rs. 80,000/- (Eighty Thousand Only), which the acceptable to him. The full and final settlement award shall be paid to him within one month from the date of the announcement of the award, failing which the respondent company shall be liable to pay penal interest @ 9% per annum. Nothing survives in the present petition. The above said statement was read over and explained to him which is duly accepted by him.

5. Thus, keeping in view that attendant facts and circumstances of the case *vis-a-vis* perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and he has been paid a sum of Rs. 80,000/- (Rs. Eighty Thousand Only) through cheque No. 002699 dated 20.12.2022 as full and final settlement amount of the claim today in the Court. Therefore, the industrial dispute raised from the side of the petitioner arising out of reference no. 150/2021, stood amicably settled between the parties.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying Rs. 80,000/- (Eighty Thousand Only) through cheque No. 002699 dated 20.12.2022. This a part, the petitioner is also entitled for his/her admissible legal dues as per law such as EPF, ESI etc. The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record i.e memorandum of settlement (PZ), identity card (PY), Settlement deed (PZ), full & final payment receipt along-with copy of cheque and resignation (PW), copy of Aadhar Card (PX), which shall form the integral part and parcel of this award.

7. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced : 02-01-2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 151 of 2021
Instituted on : 05-05-2021
Decided on : 02-01-2023

Jatinder Kumar s/o Shri PyaraLal, r/o Village Ram Nagar (Kholi), P.O. Nanakpur, Tehsil Kalka, District Panchkula, Haryana . .*Petitioner.*

VERSUS

The Managing Director M/s Quixotic Health Care (Unit-II), Village Kalu Jhanda, P.O. Barotiwala, Tehsil Baddi, District Solan, H.P. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Ravi Tekta, Advocate
For respondent : Shri Dheeraj Bansal, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 23.12.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the services of Sh. Jatinder Kumar, s/o Shri Pyara Lal, r/o Village Ram Nagar (Kholi), P.O. Nanakpur, Tehsil Kalka, District Panchkula, Haryana by way of closing down the gate w.e.f. 27.01.2020, by the Managing Director, M/s Quixotic Health care (Unit-II) Village Kalu Jhanda, P.O. Barotiwala, Tehsil Baddi, Distt. Solan, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including reinstatement, back wages, seniority, past service benefits and compensation the above aggrieved workman, is entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri Ravi Tekta, Advocate has appeared on behalf of the petitioner whereas Shri Dheeraj Bansal, Advocate had appeared for respondent.

3. To the fore Shri S .L. Gupta, Manager, HR of respondent company has stated at the bar that the Industrial Despute raised on behalf of the petitioner stood amicably resolved by way of an amicable settlement (PZ) and the respondent company has agreed to pay an amount of Rs. 75,000/- (Rs. Seventy Five Thousand only) towards full and final settlement amount of the claim within a period of one month from the date of the announcement of award failing which the respondent company shall be liable to pay penal interest @ 9% per annum. He has also placed on record memorandum of settlement (PZ), identity card (PY) and settlement deed (PZ). To this effect his statement recorded separately and placed on record.

4. Vide separate statement Shri Jatinder Kumar, petitioner, has stated that he was engaged in the respondent company on 10.12.2012 and had worked as such till 27.01.2020. He had completed 240 working days in each calendar year. He raised an industrial dispute regarding the

termination of his services by the respondent management by way of closing down gates w.e.f 27.01.2020, without complying in the provision of the Industrial Dispute Act 1947, for which the reference has been received from the appropriate government for its legal adjudication. He further stated at the bar that the aforesaid industrial dispute raised on his behalf stood amicably resolved by way of an amicable settlement. As per the settlement the respondent/company is ready and willing to make him the full and final payment towards lump sum compensation amounting to Rs. 75,000/- (Seventy Five Thousand Only), which the acceptable to him. The full and final settlement award shall be paid to him within one month from the date of the announcement of the award, failing which the respondent company shall be liable to pay penal interest @ 9% per annum. Nothing survives in the present petition. The above said statement was read over and explained to him which is duly accepted by him.

5. Thus, keeping in view that attendant facts and circumstances of the case *vis-a-vis* perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and he has been paid a sum of Rs. 75,000/- (Rs. Seventy Five Thousand Only) through cheque No. 002707 dated 20.12.2022 as full and final settlement amount of the claim today in the Court. Therefore, the industrial dispute raised from the side of the petitioner arising out of reference no.151/2021, stood amicably settled between the parties.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying Rs. 75,000/- (Seventy Five Thousand Only) through cheque No. 002707 dated 20.12.2022. This a part, the petitioner is also entitled for his/her admissible legal dues as per law such as EPF, ESI etc. The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record i.e memorandum of settlement (PZ), identity card (PY), Settlement deed (PZ), full & final payment receipt along-with copy of cheque and resignation (PW), copy of Aadhar Card (PX), which shall form the integral part and parcel of this award.

7. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced : 02-01-2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 152 of 2021
Instituted on : 01-09-2021
Decided on : 02-01-2023

Datinder Singh s/o Shri Mewa Singh, r/o Village Karanpur, P.O.Nanakpur, Tehsil Kalka,
District Panchkula, Haryana. . *Petitioner.*

VERSUS

The Managing Director M/s Quixotic Health Care (Unit-II), Village Kalu Jhanda, P.O. Barotiwala, Tehsil Baddi, District Solan, H.P. . .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Ravi Tekta, Advocate

For respondent : Shri Dheeraj Bansal, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 23.12.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the services of Sh. Datinder Singh s/o Shri Mewa Singh, r/o Village Karanpur, P.O. Nanakpur, Tehsil Kalka, District Panchkula, Haryana by way of closing down the gate w.e.f. 27.01.2020, by the Managing Director, M/s Quixotic Health care (Unit-II) Village Kalu Jhanda, P.O Barotiwala, Tehsil- Baddi, Distt. Solan, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including reinstatement, back wages, seniority, past service benefits and compensation the above aggrieved workman, is entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri Ravi Tekta, Advocate has appeared on behalf of the petitioner whereas Shri Dheeraj Bansal, Advocate had appeared for respondent.

3. To the fore Shri S. L. Gupta, Manager, HR of respondent company has stated at the bar that the Industrial Dispute raised on behalf of the petitioner stood amicably resolved by way of an amicable settlement (PZ) and the respondent company has agreed to pay an amount of Rs. 85,000/- (Rs. Eighty Five Thousand only), towards full and final settlement amount of the claim within a period of one month from the date of the announcement of award failing which the respondent company shall be liable to pay penal interest @ 9% per annum. He has also placed on record memorandum of settlement (PZ), identity card (PY) and settlement deed (PZ). To this effect his statement recorded separately and placed on record.

4. Vide separate statement Shri Datinder Singh, petitioner, has stated that he was engaged in the respondent company on 10.03.2010 and had worked as such till 27.01.2020. He had completed 240 working days in each calendar year. He raised an industrial dispute regarding the termination of his services by the respondent management by way of closing down gates w.e.f 27.01.2020, without complying in the provision of the industrial dispute act 1947, for which the reference has been received from the appropriate government for its legal adjudication. He further stated at the bar that the aforesaid industrial dispute raised on his behalf stood amicably resolved by way of an amicable settlement. As per the settlement the respondent/company is ready and willing to make him the full and final payment towards lump sum compensation amounting to Rs. 85,000/- (Eighty Five Thousand Only), which the acceptable to him. The full and final settlement award shall be paid to him within one month from the date of the announcement of the award, failing which the respondent company shall be liable to pay penal interest @ 9% per annum. Nothing survives in the present petition. The above said statement was read over and explained to him which is duly accepted by him.

5. Thus, keeping in view that attendant facts and circumstances of the case *vis-a-vis* perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and he has been paid a sum of Rs. 85,000/- (Rs. Eighty Five Thousand Only) through cheque No. 002688 dated 20.12.2022, as full and final settlement amount of the claim today in the Court. Therefore, the industrial dispute raised from the side of the petitioner arising out of reference no.152/2021, stood amicably settled between the parties.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying Rs. 85,000/- (Eighty Five Thousand Only) through cheque No. 002688 dated 20.12.2022. This a part, the petitioner is also entitled for his/her admissible legal dues as per law such as EPF, ESI etc. The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record i.e memorandum of settlement (PZ), identity card (PY), Settlement deed (PZ), full & final payment receipt along-with copy of cheque and resignation (PW), copy of Aadhar Card (PX), which shall form the integral part and parcel of this award.

7. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced : 02-01-2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 35 of 2020

Instituted on : 02-03-2020

Decided on : 02-01-2023

The President and General Secretary, Himachal Pradesh Industrial Workers Union (Regd.)
155, Sesa Care Pvt. Ltd. Workers Union, VPO Dhaula Kaun, Tehsil Paonta Sahib, District Sirmaur,
H.P.*Petitioner.*

VERSUS

1. The Factory Manager, Sesa Care Pvt. Ltd. Khasra No. 333/77/1 Nahan Road Mauja
Dhaulta Kaun, Tehsil Paonta Sahib, District Sirmaur, HP.

2. Prop., M/s Om Staffing Labour Solution Contractor Sesa Care Pvt. Ltd., Dhaulta Kaun,
Tehsil Paonta Sahib, District Sirmaur, HP (contractor)*Respondents.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Shri J.C. Bhardwaj, AR

For the Respondent No.1 : Shri Anil Chauhan, Advocate

For the Respondent No. 2 : Ex-parte

AWARD

The following reference petition has been, received from the appropriate government, *vide* notification dated 17.02.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether demand no. 1,2,5,6, 8 and 9 raised vide demand notice dated 14.06.2019 (copy enclosed) by the President and General Secretary, Himachal Pradesh Industrial Workers Union (Regd.) 155, Sesa Care Pvt. Ltd. Workers Union, VPO Dhaula Kaun, Tehsil Paonta Sahib, District Sirmaur, HP before (i) The Factory Manager, Sesa Care Pvt. Ltd. Khasra No. 333/77/1, Nahan Road Mauja Dhaula Kaun, Tehsil Paonta Sahib, District Sirmaur, HP (Principal Employer) and (ii) Prop., M/s Om Staffing Labour Solution Contractor Sesa Care Pvt. Ltd. Dhaula Kaun, Tehsil Paonta Sahib, District Sirmaur, HP (contractor) for fulfilling are proper and justified? If yes, what relief the aggrieved workmen are entitled from the above management/employers?”

2. Key facts necessary for the disposal of the present reference petition as alleged by the petitioner union in the statement of claim are thus that the petitioner union is a duly registered organization of the workmen employed in the respondent establishment/company. The workers of the petitioner union has raised demands vide demand charter dated 14.6.2019 that the workers employed through name lender contractor who are working on the same set of perennial natured work be granted remuneration at par with their directly employed workmen and after categorization and declaration as per nature of work, the workmen be granted wages in view of the upward trends of the price of essential commodities in the market. The workmen be granted hike in the wages in accordance with the consumer price index compiled by the Labour Bureau. The management be directed to refrain from the practice of fictional breaks and other unfair labour practice and the respondent company may also be directed to formulate and implement the policy wherein, the workmen employed through name lender contractor after completion of 5 years of service. The workmen may be given two pairs of uniform and one pair of shoes along-with washing allowances each year. The EPF of all contractual workmen may be transferred from Uttarakhand to Himachal Pradesh. The workmen who were given the designation of Trainee Operator at the time of their appointment may be given the designation of Junior Operator after completion of 6 months as trainee.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

“That all the demands are fully justified in each and every respect being genuine and reasonable and therefore every demand be awarded in favour of the workmen in the interest of justice, equity and fair play. That those demands would only put very little burden on the respondent management and mover over, the respondent is in a position to bear this much as compared to their profits and prospering financial position. The respondent industrial establishment is a profit making establishment earning huge profits due to the hard labour rendered by the workmen employed in the factory and as such the management has the paying capacity and therefore while keeping in view the hardships of the workers, it is most respectfully prayed that your

honour may kindly be pleased to award all the justified demands in favour of the workmen shown on the roll of name lender contractor and union at larger with costs throughout which shall be in the interest of justice, equity and equality. The workmen and the union reserve the right to amend alter or add in the statement of claim, if, as and when it may be necessary.”

4. The lis was resisted and contested by respondent by filing written reply on *inter-alia* preliminary objections that neither there exists any union of the petitioner in the Sesa Care Pvt. Ltd nor there are any employees seeking any demand of any kind, therefore, there is no basis and reason to file the present petition before this Court. The respondent company has outsourced the work to the contractor having valid license as per the norms, otherwise for the regular work of the factory the respondent company has already its regular employees who use to work in the factory as and when needed.

5. On merits, the respondent company prayed for the dismissal of the claim petition.

6. No rejoinder was filed.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 05.03.2022, as under:

1. Whether the demands no. 1, 2, 5, 6, 8 and 9 raised vide demand notice dated 14.06.2019 by the petitioner union before the respondents for fulfilling are proper and justified as alleged? . . .*OPP*.

2. If issue no.1 is proved in affirmative to what relief the petitioner are entitled to? . . .*OPP*.

3. Whether there exists neither any union nor the petitioners are employees seeking any demands, as alleged? . . .*OPR*.

4. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No.1 No

Issue No.2 Not entitled to any relief

Issue No.3 No

Relief. Reference petition is answered in negative as per operative part of the award.

REASONS FOR FINDINGS

ISSUES NO.1 & 2

11. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. It is particular to mention herein that this Court vide order dated 27.12.2022, observed that the case is listed for entire evidence of the petitioner since 05.03.2022. A period of approximately one year has already been elapsed. This Court afforded as many as 9 (Nine) opportunities to the petitioner union to lead their evidence in support of claim. Sufficient opportunities were afforded to the petitioner. The Ld. Counsel for the petitioner union apprised to the fact that it be treated as last opportunity. No further opportunity shall be granted for recording the evidence of the petitioner. Despite the fact petitioner witnesses were not examined on behalf of the petitioner. Subsequently, this Court vide order dated 03.12.2022, has ordered that no witness are present despite the last opportunity on behalf of the petitioner. The Ld. Counsel for the petitioner prayed some more time for recording the evidence on behalf of the petitioner, the prayer is declined. The Ld. Counsel for the petitioner has already been apprised of the fact that sufficient opportunities were afforded and it be treated as last opportunity failing which shall automatically deemed to be closed. The perusal of case record would revealed that the case is listed for entire evidence of the petitioner since 05.03.2022 and a period of approximately one year has already been elapsed. This Court afforded as many as 9 (Nine) opportunities to the petitioner union. Sufficient opportunities were afforded to the petitioner union. No further opportunity shall be granted for recording the evidence of the petitioner. Therefore, this Court is left with no other alternative but to close the evidence of the petitioner union by the order of the Court and accordingly the same is hereby ordered to be closed.

13. More particularly, it is the bounded duty of the petitioner union to prove his case by leading cogent and clinching evidence. Petitioner is the master of his own case and he cannot taken any undue advantages of the weaknesses of the respondents. It is the petitioner union who alleges must prove his case before this Court. In the absence of any cogent and clinching proof, both in shape of oral and documentary, leads to this Court to held that the demands no. 1,2,5,6,8 and 9 raised vide demand notice dated 14.06.2019 by the petitioner union before the respondents for fulfilling are not proper and justified, as alleged.

14. For the foregoing reasons, in view of discussion and finding arrived at by me hereinbefore, the present reference is ordered to be answered in negative as both the aforesaid issues are answered in negative.

ISSUE NO. 3

15. In support of this issue no specific evidence has been led by the respondent, which could go to show that there exists neither any union nor the petitioners are employees seeking any demands. Therefore, in view of no evidence led from the side of the respondent, this issue is answered against the respondents.

RELIEF

16. As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner union deserve dismissal and the same is accordingly dismissed. Resultantly, the reference stands answered in negative. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 2nd day of Jan., 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 39 of 2022

Instituted on : 14-02-2022

Decided on : 02-01-2023

Rinku s/o Shri Jai Chand, r/o Village Uday Vihar, P.O. Barog, Tehsil and District Solan,
H.P. . *Petitioner.*

VERSUS

The Occupier/Factory Manager, M/s Ambi Pharma, Plot No. 18, Industrial Area,
Vaknaghat, Tehsil Kandaghat, District Solan, H.P.

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondent : Nemo

AWARD/ORDER

The following reference petition has been, received from the Appropriate Government vide notification dated 22.10.2021, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether the termination of the services of Shri Rinku s/o Shri Jai Chand, r/o Village Uday Vihar, P.O. Barog, Tehsil and District Solan, H.P. w.e.f. 23.03.2021 by the Occupier/Factory Manager, M/s Ambi Pharma, Plot No. 18, Industrial Area, Vaknaghat, Tehsil Kandaghat, District Solan, HP, without conducting domestic enquiry and without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation, the above aggrieved workman is entitled to from the above employer/management.”

2. The perusal of case record would reveal that the present reference has been received by this Tribunal on 14.1.2022 and thereafter on 14.02.2022, this Tribunal had issued notices to both the parties to appear before this Court/Tribunal. The matter is being listed for the service of the parties since 14.02.2022 but neither the petitioner nor the respondent had appeared before this Court, which seems that at present both the parties are not interested to pursue this reference petition. Therefore, I have left with no other alternative but to decide the present reference petition on the basis of material, whatsoever, is available on record.

3. At the very inception, it will be apt to take note of the relevant provisions of the Industrial Disputes Act, 1947. Section 2 (b) of the Act, which defines the Award as hereunder:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

4. Furthermore, Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit.

5. The State of Himachal Pradesh has framed rules called “The Industrial Disputes Rules, 1974.” Similarly, Rule 25 thereof which reads thus:-

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

6. Rule 25 of the Industrial Disputes Rules, 1974 authorizes the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Labour Court to presume that all the parties are present before it although, in fact, it is not true, and thus make an ex parte award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Court, in all fairness, has to imagine that the worker is present, he is unwilling to file the statement of claim, adduce evidence or argue her/his case.

7. In the instant case, neither the worker nor his Authorized Representative has put in appearance before this Tribunal despite having been issued many notice on the address given on the reference itself. In these circumstances, the Labour Court can proceed and pass ex parte award on its merits.

8. This Court is constrained to draw an adverse inference that the petitioner is not interested in pursuing further. The case is lingering upon for the fault of none than other but the petitioner himself. Therefore, the present reference petition is answered in negative for want of prosecution.

9. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 2nd Day of Jan., 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 40 of 2022

Instituted on : 14-02-2022

Decided on : 02-01-2023

Rohtash s/o Shri Raju Ram, r/o Village Neri, Devnagar, Tehsil Rampur, District Shimla,
H.P. *Petitioner.*

VERSUS

The Occupier/Factory Manager M/s Ambi Pharma, Plot No. 18, Industrial Area, Vaknaghat,
Tehsil Kandaghat, District Solan, H.P. *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondent : Nemo

AWARD/ORDER

The following reference petition has been, received from the Appropriate Government vide notification dated 22.10.2021, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether the termination of the services of Shri Rohtash s/o Shri Raju Ram r/o Village Neri, Devnagar, Tehsil Rampur, District Shimla, HP w.e.f. 23.03.2021 by the Occupier/Factory Manager M/s Ambi Pharma, Plot No. 18, Industrial Area, Vaknaghat, Tehsil Kandaghat, District Solan, HP, without conducting domestic enquiry and without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation, the above aggrieved workman is entitled to from the above employer/management.”

2. The perusal of case record would reveal that the present reference has been received by this Tribunal on 14.1.2022 and thereafter on 14.02.2022, this Tribunal had issued notices to both the parties to appear before this Court/Tribunal. The matter is being listed for the service of the parties since 14.02.2022 but neither the petitioner nor the respondent had appeared before this Court, which seems that at present both the parties are not interested to pursue this reference petition. Therefore, I have left with no other alternative but to decide the present reference petition on the basis of material, whatsoever, is available on record.

3. At the very inception, it will be apt to take note of the relevant provisions of the Industrial Disputes Act, 1947. Section 2 (b) of the Act, which defines the Award as hereunder:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”

4. Furthermore, Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit.

5. The State of Himachal Pradesh has framed rules called “The Industrial Disputes Rules, 1974.” Similarly, Rule 25 thereof which reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

6. Rule 25 of the Industrial Disputes Rules, 1974 authorizes the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Labour Court to presume that all the parties are present before it although, infact, it is not true, and thus make an ex parte award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Court, in all fairness, has to imagine that the worker is present, he is unwilling to file the statement of claim, adduce evidence or argue her/his case.

7. In the instant case, neither the worker nor his Authorized Representative has put in appearance before this Tribunal despite having been issued many notice on the address given on the reference itself. In these circumstances, the Labour Court can proceed and pass ex parte award on its merits.

8. This Court is constrained to draw an adverse inference that the petitioner is not interested in pursuing further. The case is lingering upon for the fault of none than other but the petitioner himself. Therefore, the present reference petition is answered in negative for want of prosecution.

9. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 2nd Day of Jan., 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 41 of 2022

Instituted on : 14-02-2022

Decided on : 02-01-2023

Vijay Kumar s/o Shri Beli Singh, r/o Village Uday, P.O. Barog, Tehsil & District Shimla
H.P. . .Petitioner.

VERSUS

The Occupier/Factory Manager, M/s Ambi Pharma, Plot No. 18, Industrial Area,
Vaknaghat, Tehsil Kandaghat, District Solan, H.P.

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondent : Nemo

AWARD/ORDER

The following reference petition has been, received from the Appropriate Government vide notification dated 22.10.2021, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether the termination of the services of Shri Vijay Kumar s/o Shri Beli Singh r/o Village Uday, P.O. Barog, Tehsil & District Shimla HP w.e.f. 23.03.2021 by the Occupier/Factory Manager M/s Ambi Pharma, Plot No. 18, Industrial Area, Vaknaghat, Tehsil Kandaghat, District Solan, HP, without conducting domestic enquiry and without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation, the above aggrieved workman is entitled to from the above employer/management.”

2. The perusal of case record would reveal that the present reference has been received by this Tribunal on 14.1.2022 and thereafter on 14.02.2022, this Tribunal had issued notices to both the parties to appear before this Court/Tribunal. The matter is being listed for the service of the parties since 14.02.2022 but neither the petitioner nor the respondent had appeared before this Court, which seems that at present both the parties are not interested to pursue this reference petition. Therefore, I have left with no other alternative but to decide the present reference petition on the basis of material, whatsoever, is available on record.

3. At the very inception, it will be apt to take note of the relevant provisions of the Industrial Disputes Act, 1947. Section 2 (b) of the Act, which defines the Award as hereunder:-

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

4. Furthermore, Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit.

5. The State of Himachal Pradesh has framed rules called “The Industrial Disputes Rules, 1974.” Similarly, Rule 25 thereof which reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

6. Rule 25 of the Industrial Disputes Rules, 1974 authorizes the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Labour Court to presume that all the parties are present before it although, infact, it is not true, and thus make an ex parte award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Court, in all fairness, has to imagine that the worker is present, he is unwilling to file the statement of claim, adduce evidence or argue her/his case.

7. In the instant case, neither the worker nor his Authorized Representative has put in appearance before this Tribunal despite having been issued many notice on the address given on the reference itself. In these circumstances, the Labour Court can proceed and pass ex parte award on its merits.

8. This Court is constrained to draw an adverse inference that the petitioner is not interested in pursuing further. The case is lingering upon for the fault of none than other but the petitioner himself. Therefore, the present reference petition is answered in negative for want of prosecution.

9. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 2nd Day of Jan., 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 163 of 2021
Instituted on : 03-09-2021
Decided on : 09-01-2023

Birbal s/o Shri Brahman Nand, r/o VPO Jangla Bhood, Tehsil Nahan, Distt. Sirmaur, H.P.
. .Petitioner.

VERSUS

The Occupier/Factory Manager, M/s Super Nova Auto Industries, Vill-Johron, Trilokpur Road, Kala Amb, Tehsil Nahan, Distt. Sirmaur, H.P. . .Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : In person

For the Respondent : Shri Vijay Kumar Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 11.08.2021, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether the termination of the services of Shri Birbal s/o Shri Brahman Nand r/o VPO Jangla Bhood, Tehsil Nahan, Distt. Sirmaur, H.P. w.e.f. 21.01.2021 by the Employer/Management i.e. The Occupier/Factory Manager, M/s Super Nova Auto Industries, Vill. Johron, Trilokpur Road, Kala Amb, Tehsil Nahan, Distt. Sirmaur, HP without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement of service, back wages, others consequential service benefits and compensation to the above aggrieved workman is entitled to from the above stated Employer/Management?”

2. On receipt of reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has filed her statement of claim.

3. Material facts necessary for the disposal of the reference are thus that the petitioner had been working as helper by the respondent in the year 2016 as worked till 20.01.2021. The services have been terminated w.e.f 21.01.2021 without following with the provisions of the Act. The petitioner has already completed more than 240 days in each calendar year. The termination of the services of the petitioner is in violation of section 25-F, 25-G, 25-H and 25-N of the Industrial Dispute Act.

4. The following relief clause has been appended in the footnote of statement of claim as under:

It is, therefore, most respectfully prayed that the illegal oral termination order dated 21.01.2021 passed by the respondent company may kindly be set aside and the petitioner may kindly be re-instated in service w.e.f. 21.01.2021 with all consequential service benefit such as continuity, full back wages and other service benefits may also be given to the petitioner. The respondent may also be directed to pay the damages to the petitioner to the tune of Rs. 5,00,000/- further the respondent company may also be burdened with the cost of litigation amounting to Rs. 50,000/-

Any other order which deem just and proper may also be passed in-favour of the petitioner/applicant and against the respondent and justice be done.

5. The lis was resisted and contested by filing written reply on *inter-alia* preliminary objections of maintainability, received full and final settlement amount and not come to the court with clean hands.

6. On merits, it is submitted that the services of the petitioner was never terminated by the respondent rather he himself has left the job and came forward to settle his accounts and executed compromised deed dated 14.07.2022. The petitioner after receiving full and final settlement has tendered his resignation, which was duly accepted by the respondent management. It is, therefore, prayed that the claim petition filed by the petitioner may kindly be dismissed.

7. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those in the statement of claim.

8. On elucidating the pleading of parties, the following issues were struck down by my Learned Predecessor for its final determination vide Court order dated 19.09.2022.

1. Whether the termination of the services of the petitioner by the respondent management w.e.f. 21.01.2021 without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? If yes, what relief the petitioner is entitled to? . . .*OPP.*
2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? . . .*OPR.*

Relief

9. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

10. I have heard the Learned Counsel for the parties, and also gone through the case record carefully.

11. For the reasons to be recorded hereinafter, while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1	:	Decided accordingly
Issue No. 2	:	No
Relief	:	Reference answered as settled as per operative part of award.

REASONS FOR FINDINGS

ISSUE NO.1

12. In order to substantiate his case the petitioner appeared into the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW1/A), wherein he has reiterated almost all the averments as made in the statement of claim. He also tendered in evidence demand notice (PW1/B), medical record of his son (PW1/C to PW1/E) and BPL certificate Mark PX-1.

13. In cross-examination, he admitted that the company remained closed during the lock-down period but the petitioner was resumed after the lock-down was over and other workers in the company resumed their work. He admitted his signatures on documents (PA) to (PF). He denied that he was paid full & final settlement amount of Rs. 55,803/- towards his entire dues. He denied to have tendered resignation to the company. He admitted that he had not filed any complaint to any authority for obtaining his signatures on blank paper.

14. In rebuttal, the respondent company has examined one Shri Vijay Kumar, Assistant Manager of respondent, who stepped into the witness box as RW-1 and tendered into evidence his sworn-in affidavit (RW-1/A), wherein he has reiterated almost all the averments as made in the reply filed on behalf of respondent. He also tendered into evidence authority letter (RW-1/B) and certificate issued by the Public Notary (RW-1/C).

15. In cross-examination, he admitted that no notice regarding the termination was given to the petitioner but volunteered that the petitioner has tendered his resignation. He denied that the resignation was obtained under pressure.

16. This is the entire evidence adduced from the side of the parties to substantiate their respective claim. However, at the stage of arguments, it is brought to my notice that there is an element of amicable settlement to be arises interse the parties. As a full and final settlement amount, the petitioner has already received an amount of Rs. 55,803/- and in case he is offered some more amount, the matter may be reconciled and settlement could have arrived between the parties.

17. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

18. At this stage, Shri Vijay Kumar, Assistant Manager of respondent company has stated at the bar that the Industrial Dispute raised on behalf of the petitioner stood amicably resolved by way of an amicable settlement as a result of which the respondent company has agreed to pay an additional amount of Rs. 20,000/- (Rs. Twenty Thousand only), towards full and final settlement amount of the claim. He has also placed on record copy of cheque (PG) and receipt (PY) on record. To this effect his statement recorded separately and placed on record.

19. Vide separate statement the petitioner, has stated that the industrial dispute raised on his behalf stood amicably resolved by way of an amicable settlement. As per the settlement the respondent/company is ready and willing to make him the full and final payment towards lump sum compensation amounting to Rs. 20,000/- (Twenty Thousand Only), which the acceptable to him. The full and final settlement award has been paid to him through cheque no. 363890 dated 28.12.2022 today in the Court. The above said statement was read over and explained to him which is duly accepted by him.

20. Thus, keeping in view that attendant facts and circumstances of the case *vis-a-vis* perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and he has been paid an additional amount of **Rs. 20,000/- (Rs. Twenty Thousand Only) through cheque No. 363890 dated 28.12.2022**, as full and final settlement amount of the claim today in the Court. Therefore, the industrial dispute raised from the side of the petitioner arising out of reference no. 163/2021, stood amicably settled between the parties.

21. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying Rs. 75,803/- (Seventy Five Thousand Eight Hundred Three Only) through cheques no. 023165 dated 16.5.2022 amounting to Rs. 55,803/- and cheque No. 363890 dated 28.12.2022 amounting to Rs. 20,000/- towards full and final settlement amount. The statement of parties recorded at the time of settlement as well as the compromise deed (PA), authority letter (PB), resignation (PC), application for withdrawal of**

reference (PD), full and final settlement (PE), receipt (PF), copy of cheque (PG) and letter dated 30.12.2022 (PH), shall remain part and parcel of this award/order. Therefore, nothing survive in the present reference petition, hence, the issue no.1 is answered as settled.

ISSUE No. 2.

22. Since, the issue no.1, above, has been decided as compromised, hence, this issue becomes redundant.

Relief.

23. As a sequel to my above discussion and findings on issues no.1 to 2, the reference is answered as settled and the award is passed accordingly as per the statements of both the parties as well as documentary proof placed on record i.e **statement of parties recorded at the time of settlement as well as the compromise deed (PA), authority letter (PB), resignation (PC), application for withdrawal of reference (PD), full and final settlement (PE), receipt (PF), copy of cheque (PG) and letter dated 30.12.2022 (PH)**, which shall form the integral part and parcel of this award.

22. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open Court today this 9th day of January, 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 100 of 2021

Instituted on : 05-05-2021

Decided on : 02-01-2023

Baldev s/o Shri Krishan Lal r/o VPO Laharpur, Tehsil Bilaspur, Distt. Yamuna Nagar,
Haryana . .*Petitioner.*

VERSUS

The Occupier/Factory Manager, M/s Shree Khatuji Industries, Village-Johron, P.O. Kala
Amb, Tehsil Nahan, Distt. Sirmaur, H.P. . .*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Shri Sandeep Chauhan, Advocate.

For the Respondent : Shri Baldev Kumar, AR.

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 25.03.2021, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of services of Shri Baldev s/o Shri Krishan Lal, r/o VPO Laharpur, Tehsil Bilaspur, Distt. Yamuna Nagar, Haryana by the Factory Manager, M/s Shree Khatuji Industries, Village Johron, P.O. Kala Amb, Tehsil Nahan, Distt. Sirmaur, HP w.e.f 19.03.2020, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. On receipt of reference from the Appropriate Government, notices were issued to the concerned parties, in pursuance to which the petitioner has filed his statement of claim praying therein that the respondent may kindly be directed to reinstate the petitioner with all consequential benefits including back-wages with interest @ 18% till reinstatement.

3. To the fore Shri Attar Singh, Manager, HR of respondent company has stated at the bar that the Industrial Dispute raised on behalf of the petitioner stood amicably resolved by way of an amicable settlement (P-2) and the respondent company has agreed to pay an amount of Rs. 66,525/- (₹ Sixty Six Thousand Five Hundred and Twenty Five only) towards full and final settlement amount of the claim. He has further deposed that ₹ 60,525/- has been paid through cheque no. 001249 dated 01.12.2022 (P-1) and remaining payment of Rs. 6000/- has been paid to the petitioner in cash. To this effect his statement recorded separately and placed on record.

4. Vide separate statement the petitioner has stated that the industrial dispute raised on his behalf stood amicably resolved by way of an amicable settlement. As per the settlement the respondent/company is ready and willing to make him the full and final payment towards lump sum compensation amounting to Rs. 66,525/- (₹ Sixty Six Thousand Five Hundred and Twenty Five only) towards full and final settlement amount of the claim. He has further deposed that ₹ 60,525/- has been paid through cheque no. 001249 dated 01.12.2022 (P-1) and remaining payment of Rs. 6000/- has been paid to the petitioner in cash today in the Court, which the acceptable to him. Nothing survives in the present petition. The above said statement was read over and explained to him which is duly accepted by him.

5. Thus, keeping in view that attendant facts and circumstances of the case *vis-a-vis* perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and he has been paid a sum of Rs. 66,525/- (₹ Sixty Six Thousand Five Hundred and Twenty Five only) towards full and final settlement amount of the claim. The petitioner has received the aforesaid settlement amount ₹ 60,525/- through cheque no. 001249 dated 01.12.2022 (P-1) and remaining amount of Rs. 6000/- has been paid to him in cash today in the Court. Therefore, the industrial dispute raised from the side of the petitioner arising out of reference no. 139/2021, stood amicably settled between the parties.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying of Rs. 66,525/- (₹ Sixty Six Thousand Five Hundred and Twenty Five only) towards full and final settlement amount of the claim. The petitioner has

received the aforesaid settlement amount ₹ 60,525/- through cheque no. 001249 dated 01.12.2022 (P-1) and remaining amount of Rs. 6000/- in cash. This a part, the petitioner is also entitled for his/her admissible legal dues as per law such as EPF, ESI etc. The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record i.e. full & final settlement (P-2) and copy of cheque (P-1) shall form the integral part and parcel of this award.

7. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced : 02-01-2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 123 of 2022

Instituted on : 02-03-2022

Decided on : 02-01-2023

Inder Bahadur, r/o Quarter No. 10, Hill View 2, Jharmajri, Tehsil Baddi, District Solan,
H.P.Petitioner.

VERSUS

The Occupier/Factory Manager M/s Hutamaki India Ltd., Plot No.9, Village Kunjhal, P.O.
Barotiwala, Tehsil Baddi, District Solan, H.P. . . .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondent : Shri Hardesh Sharma, Adv.

AWARD/ORDER

The following reference petition has been, received from the Appropriate Government vide notification dated 18.02.2022, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether the termination of the services of Shri Inder Bahadur r/o Quarter No. 10, Hill View 2, Jharmajri, Tehsil Baddi, District Solan, H.P. by the Occupier/Factory Manager M/s Hutamaki India Ltd., Plot No. 9, Village Kunjhal, P.O. Barotiwala, Tehsil Baddi, District Solan, HP w.e.f. 03.04.2021, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief

including reinstatement of the services, seniority, amount of back-wages, past service benefits and compensation the above aggrieved workman is entitled to from the above stated employer/management.”

2. The perusal of case record would reveal that the present reference has been received by this Tribunal on 25.02.2022 and thereafter w.e.f. 02.03.2022, this Tribunal is issuing notices for the service of the petitioner on the address available on record but neither the petitioner nor any Authorized Representative/ Advocate had appeared on his behalf before this Court, which seems that at present the petitioner is not interested to pursue his reference petition. Therefore, I have left with no other alternative but to decide the present reference petition on the basis of material, whatsoever, is available on record.

3. At the very inception, it will be apt to take note of the relevant provisions of the Industrial Disputes Act, 1947. Section 2 (b) of the Act, which defines the Award as hereunder:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

4. Furthermore, Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit.

5. The State of Himachal Pradesh has framed rules called “The Industrial Disputes Rules, 1974.” Similarly, Rule 25 thereof which reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

6. Rule 25 of the Industrial Disputes Rules, 1974 authorizes the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Labour Court to presume that all the parties are present before it although, infact, it is not true, and thus make an ex parte award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Court, in all fairness, has to imagine that the worker is present, he is unwilling to file the statement of claim, adduce evidence or argue her/his case.

7. In the instant case, neither the worker nor his Authorized Representative has put in appearance before this Tribunal despite having the knowledge of the present dispute and after issuing many notice on the address given on the reference itself. In these circumstances, the Labour Court can proceed and pass ex parte award on its merits.

8. This Court is constrained to draw an adverse inference that the petitioner is not interested in pursuing further. The case is lingering upon for the fault of none than other but the petitioner himself. Therefore, the present reference petition is answered in negative for want of prosecution.

9. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 2nd Day of Jan., 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 98 of 2021

Instituted on : 05-05-2021

Decided on : 02-01-2023

Manoj Kumar s/o Shri Chet Ram, r/o Village & P.O. Mahasu Tehsil Kothkhai, District Shimla, H.P. . .Petitioner.

VERSUS

The Occupier/Factory Manager M/s Adlex System Manufacturing, 2nd Floor, Near Shiv Mandir, Kailer (Saproon), District Solan, H.P. . .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo.

For the Respondent : Shri Devender Sharma, Adv.

AWARD/ORDER

The following reference petition has been, received from the Appropriate Government *vide* notification dated 09.04.2021, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether the termination of the services of Shri Manoj Kumar s/o Shri Chet Ram, r/o Village & P.O. Mahasu, Tehsil Kothkhai, District Shimla, H.P. *w.e.f.* 18.11.2020 by the Occupier/Factory Manager M/s Adlex System Manufacturing, 2nd Floor, Near Shiv Mandir, Kailer (Saproon), District Solan, HP without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above stated employer/management.”

2. The perusal of case record would reveal that the present reference has been received by this Tribunal on 17.04.2021 and thereafter on 05.05.2021, this Tribunal had issued notices to both the parties to appear before this Court/Tribunal 06.08.2021 and thereafter the case was listed on 14.9.2021 on which date Shri Vikas Chauhan, Advocate had appeared on behalf of the petitioner and Shri Davinder Sharma, Advocate had appeared for respondent. The petitioner had been granted

four opportunities to file the statement of claim but he failed to file the same and also failed to appear before this Tribunal. This Tribunal is issuing notices for the service of the petitioner since 04.05.2022 but neither the petitioner nor any Authorized Representative/ Advocate had appeared on his behalf before this Court, which seems that at present the petitioner is not interested to pursue his reference petition as he has failed to appear before this Tribunal despite having been served in accordance with law. Therefore, I have left with no other alternative but to decide the present reference petition on the basis of material, whatsoever, is available on record.

3. At the very inception, it will be apt to take note of the relevant provisions of the Industrial Disputes Act, 1947. Section 2 (b) of the Act, which defines the Award as hereunder:-

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

4. Furthermore, Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit.

5. The State of Himachal Pradesh has framed rules called “The Industrial Disputes Rules, 1974.” Similarly, Rule 25 thereof which reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

6. Rule 25 of the Industrial Disputes Rules, 1974 authorizes the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Labour Court to presume that all the parties are present before it although, infact, it is not true, and thus make an ex parte award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Court, in all fairness, has to imagine that the worker is present, he is unwilling to file the statement of claim, adduce evidence or argue her/his case.

7. In the instant case, neither the worker nor his Authorized Representative has put in appearance before this Tribunal despite having been served in accordance with law and after issuing many notice on the address given on the reference itself. In these circumstances, the Labour Court can proceed and pass ex parte award on its merits.

8. This Court is constrained to draw an adverse inference that the petitioner is not interested in pursuing further. The case is lingering upon for the fault of none than other but the petitioner himself. Therefore, the present reference petition is answered in negative for want of prosecution.

9. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 2nd Day of Jan., 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 287 of 2021

Instituted on : 14-12-2021

Decided on : 02-01-2023

Anish Mohammad s/o Shri Nazeer Mohammad, VPO Patta Barwari, Tehsil & District Solan,
H.P. . .Petitioner.

VERSUS

The Occupier/Factory Manager, M/s Adlex System Manufacturing, 2nd Floor, Near Shiv
Mandir, Kailer (Saproon), District Solan, H.P. . .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : In person.;

For the Respondent : Shri Devender Sharma, Adv.

AWARD/ORDER

The following reference petition has been, received from the Appropriate Government *vide* notification dated 07.07.2021, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether the termination of the services of Shri Anish Mohammad s/o Shri Nazeer Mohammad, VPO Patta Barwari, Tehsil & District Solan, HP w.e.f. 15.09.2020 by the Occupier/Factory Manager, M/s Adlex System Manufacturing, 2nd Floor, Near Shiv Mandir, Kailer (Saproon), District Solan, HP without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement of service, back-wages, other consequential service benefits and compensation to the above aggrieved workman is entitled to from the above stated employer/management.”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner had appeared in person whereas Shri Devender Sharma, Advocate had appeared for respondent.

3. To the fore Shri Akhil Bhatt, Supervisor of respondent company has stated at the bar that the Industrial Dispute raised on behalf of the petitioner stood amicably resolved by way of an

amicable settlement. As per the settlement the petitioner is not interested to proceed further with the present reference petition. He has also placed on record the copy of authority letter (PY) and application written by the petitioner (PZ) to this effect his statement recorded separately and placed on record.

4. Vide separate statement the petitioner has stated that since the matter stood amicably settled between the parties, hence, he do not want to proceed further with the present reference petition. The same may kindly be decided accordingly. The above said statement was read over and explained to him which is duly accepted by him.

5. Thus, keeping in view that attendant facts and circumstances of the case vis- a -vis perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner. Therefore, the industrial dispute raised from the side of the petitioner arising out of reference no.287/2021, stood amicably settled between the parties.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record i.e. authority letter (PY) and application written by the petitioner (PZ), which shall form the integral part and parcel of this award.

7. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced : 02-01-2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 288 of 2021

Instituted on : 14-12-2021

Decided on : 02-01-2023

Vijay Kumar s/o Shri Dhuni Chand, r/o Village Phufan, P.O. Saned, Tehsil & District Hamirpur, H.P. . *Petitioner.*

VERSUS

The Occupier/Factory Manager, M/s Adlex System Manufacturing, 2nd Floor, Near Shiv Mandir, Kailer (Saproon), District Solan, H.P. . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondent : Shri Devender Sharma, Adv.

AWARD/ORDER

The following reference petition has been, received from the Appropriate Government vide notification dated 07.07.2021, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether the termination of the services of Shri Vijay Kumar s/o Shri Dhuni Chand, r/o Village Phufan, P.O. Saned Tehsil & District Hamirpur, H.P. w.e.f. 24.11.2020 by the Occupier/Factory Manager, M/s Adlex System Manufacturing, 2nd Floor, Near Shiv Mandir, Kailer (Saproon), District Solan, HP without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement of service, back-wages, other consequential service benefits and compensation to the above aggrieved workman is entitled to from the above stated employer/management.”

2. The perusal of case record would reveal that the present reference has been received by this Tribunal on 09.12.2021 and thereafter on 14.12.2021, this Tribunal had issued notices to both the parties to appear before this Court/Tribunal 18.2.2022, 25.4.2022 and 2.6.2022. On 2.6.2022, the petitioner appeared in person whereas Ms. Alka Thakur, Advocate had appeared on behalf of the respondent and the case was listed for 27.6.2022 on which date the petitioner failed to appear before this Court/Tribunal and thereafter the matter is being listed for the service of the petitioner since 27.06.2022 but neither the petitioner nor any Authorized Representative/ Advocate had appeared on his behalf before this Court, which seems that at present the petitioner is not interested to pursue his reference petition as he has failed to appear before this Tribunal despite having been served in accordance with law. Therefore, I have left with no other alternative but to decide the present reference petition on the basis of material, whatsoever, is available on record.

3. At the very inception, it will be apt to take note of the relevant provisions of the Industrial Disputes Act, 1947. Section 2 (b) of the Act, which defines the Award as hereunder:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

4. Furthermore, Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit.

5. The State of Himachal Pradesh has framed rules called “The Industrial Disputes Rules, 1974.” Similarly, Rule 25 thereof which reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

6. Rule 25 of the Industrial Disputes Rules, 1974 authorizes the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Labour Court to presume that all the parties are present before it although, infact, it is not true, and thus make an ex parte award. This Tribunal in these circumstances has to imagine that the absentee workman is present

and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Court, in all fairness, has to imagine that the worker is present, he is unwilling to file the statement of claim, adduce evidence or argue her/his case.

7. In the instant case, neither the worker nor his Authorized Representative has put in appearance before this Tribunal despite having been served in accordance with law and after issuing many notice on the address given on the reference itself. In these circumstances, the Labour Court can proceed and pass ex parte award on its merits.

8. This Court is constrained to draw an adverse inference that the petitioner is not interested in pursuing further. The case is lingering upon for the fault of none than other but the petitioner himself. Therefore, the present reference petition is answered in negative for want of prosecution.

9. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 2nd Day of Jan., 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 148 of 2018

Instituted on : 06-08-2017

Decided on : 02-01-2023

Suleman Uraon s/o Shri Somra Uraon, r/o Shakuntla Niwas, Lower Sangti, Sanjauli,
Shimla-6 . . . *Petitioner.*

VERSUS

The Principal Convent of Jesus and Merry, Navbahar, Shimla-2 . . . *Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : None

For the Respondent : Shri Kuldeep Thakur, Advocate

AWARD

The following reference petition has been, received from the appropriate government, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether termination of the services of Shri Suleman Uraon s/o Shri Somra Uraon R/o Shakuntla Niwas, Lower Sangti, Sanjauli, Shimla-6 by the Principal Convent of Jesus and Merry, Navbahar, Shimla-2 w.e.f. 31.12.2017, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, seniority, back-wages and compensation the aggrieved workman is entitled to from the above employer/management?”

2. Key facts necessary for the disposal of the present reference petition as alleged by the petitioner in the statement of claim are thus that he was engaged as Safai Karamchari by the respondent on 14.08.2013 and worked as such till 31.12.2017 and thereafter his services were illegally terminated by the respondent without complying the provisions of the Act. The respondent did not conduct any enquiry against the petitioner before terminating his services and as such he was not given proper opportunity of being heard. The petitioner made several representation for his re-engagement but to no avail.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

“It is therefore prayed that keeping in view the aforesaid submissions the respondent school/college may kindly be directed to re-engage the petitioner from 31.12.2017 with all consequential benefits and seniority etc. Any other relief which this Hon’ble Court may feel fit and proper be also awarded in favour of the petitioner/claimant in the larger interest of justice and equity. ”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, estoppel, petition being time barred, suppression of material facts and the claim petition is not based upon the true facts, have been raised.

5. On merits, it is submitted that the services of the petitioner have been availed through the Vegas Services Pvt. Ltd. as the School was in need of some daily wage workers in place of regular workers. It is further submitted that the petitioner engaged for different posts on daily wages with effect from his engagement during the different intervals from time to time and that too during the leave period of regular employee purely on temporary basis. It is denied that the petitioner represented to the respondent several times. The demand notice raised by the petitioner was duly replied by the respondent school. It is therefore prayed that the claim petition filed by the petitioner may kindly be dismissed.

6. No rejoinder was filed.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 25.10.2021, as under:

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 31.12.2017 without complying the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? . . .*OPP.*
2. If issue no.1 is proved in affirmative then what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form, as alleged? . . .*OPR.*
4. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No.1	No
Issue No.2	Not entitled to any relief
Issue No.3	No
Relief.	Reference petition is answered in negative as per operative part of the award.

REASONS FOR FINDINGS

ISSUES NO.1 & 2

11. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. It is particular to mention herein that this Court vide order dated 28.12.2022, observed that the case is listed for entire evidence of the petitioner since 25.10.2021 but after availing five opportunities in order to lead evidence, the petitioner failed to appear before this Court. This Court is issuing notices to the petitioner since 15.07.2022 but the petitioner failed to appear before this Tribunal. A period of approximately one and half year has already been elapsed. This Court afforded as many as 5 (Five) opportunities to the petitioner. Sufficient opportunities were afforded to the petitioner but neither the petitioner nor any Authorized Representative/ Advocate had appeared on his behalf before this Court, which seems that at present the petitioner is not interested to pursue this reference petition as he has failed to appear before this Tribunal despite having been served in accordance with law. Therefore, I have left with no other alternative but to decide the present reference petition on the basis of material, whatsoever, is available on record.

13. At the very inception, it will be apt to take note of the relevant provisions of the Industrial Disputes Act, 1947. Section 2 (b) of the Act, which defines the Award as hereunder:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

14. Furthermore, Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit.

15. The State of Himachal Pradesh has framed rules called “The Industrial Disputes Rules, 1974.” Similarly, Rule 25 thereof which reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding

before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

16. Rule 25 of the Industrial Disputes Rules, 1974 authorizes the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Labour Court to presume that all the parties are present before it although, infact, it is not true, and thus make an ex parte award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Court, in all fairness, has to imagine that the worker is present, he is unwilling to file the statement of claim, adduce evidence or argue her/his case.

17. In the instant case, neither the worker nor his Authorized Representative/Advocate has put in appearance before this Tribunal despite having been served in accordance with law and after issuing many notice on the address given on the reference itself. In these circumstances, the Labour Court can proceed and pass ex parte award on its merits.

18. This Court is constrained to draw an adverse inference that the petitioner is not interested in pursuing further. The case is lingering upon for the fault of none than other but the petitioner himself. More particularly, it is the bounded duty of the petitioner to prove his case by leading cogent and clinching evidence. Petitioner is the master of his own case and he cannot taken any undue advantages of the weaknesses of the respondents. It is the petitioner who alleges must prove his case before this Court. In the absence of any cogent and clinching proof, both in shape of oral and documentary, leads to this Court to held that the termination of the petitioner by the respondent w.e.f. 31.12.2017, without complying with the provisions of the Act is not illegal and unjustified, as alleged. Accordingly, both these issues are decided against the petitioner and in favour of the respondent.

ISSUE NO.3.

19. In support of this issue no specific evidence has been led by the respondent, which could go to show that as to how the present petition is not maintainable in the present form especially when the same has been filed pursuant to the reference received from appropriate government. I find nothing wrong with this petition which is perfectly maintainable in the present form. Therefore, in view of no evidence led from the side of the respondent, this issue is answered agaisnt the respondent.

RELIEF

20. As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner deserve dismissal and the same is accordingly dismissed. Resultantly, the reference stands answered in negative. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 2nd day of Jan., 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 149 of 2018

Instituted on : 01-08-2017

Decided on : 02-01-2023.

Bhag Singh s/o Shri Chet Ram Pal, r/o Sunny Niwas, Dev Nagar, Shimla, H.P. . .*Petitioner.*

VERSUS

The Principal Convent of Jesus and Merry, Navbahar, Shimla-2 . .*Respondent.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Ms. Shital, Advocate

For the Respondent : Shri Deepak Gupta, Advocate

AWARD

The following reference petition has been, received from the appropriate government, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether termination of the services of Shri Bhag Singh s/o Shri Chet Ram Pal, r/o Sunny Niwas Dev Nagar, Shimla, HP by the Principal Convent of Jesus and Merry, Navbahar, Shimla-2 w.e.f. 31.12.2016, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, seniority, back-wages and compensation the aggrieved workman is entitled to from the above employer/management?”

2. Key facts necessary for the disposal of the present reference petition as alleged by the petitioner in the statement of claim are thus that he was engaged as clerk by the respondent on 01.03.2009 and worked as such till 31.12.2016 and thereafter his services were illegally terminated by the respondent without complying the provisions of the Act. The respondent did not conduct any enquiry against the petitioner before terminating his services and as such he was not given proper opportunity of being heard. The petitioner made several representation for his re-engagement but to no avail.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

“It is therefore prayed that keeping in view the aforesaid submissions the respondent school/college may kindly be directed to re-engage the petitioner from 31.12.2016 with all consequential benefits and seniority etc. Any other relief which this Hon’ble Court may feel fit and proper be also awarded in favour of the petitioner/claimant in the larger interest of justice and equity. ”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, estoppel, petition being time barred, suppression of material facts and the claim petition is not based upon the true facts, have been raised.

5. On merits, it is submitted that the services of the petitioner have been engaged on daily wage basis by the respondent and after his appointment as clerk on daily wage basis, he has agreed that he can be engaged for different posts during the different intervals. It is further submitted that there arises no question of holding any domestic enquiry as the services of the petitioner were purely on temporary basis. The petitioner has left the school at his own after receiving entire arrears of salary. The demand notice raised by the petitioner was duly replied by the respondent school. It is therefore prayed that the claim petition filed by the petitioner may kindly be dismissed.

6. No rejoinder was filed.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 23.02.2022, as under:

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 31.12.2016 without complying the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? . . .*OPP.*
2. If issue no.1 is proved in affirmative then what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable in the present form, as alleged? . . .*OPR.*
4. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	No
Issue No.2	Not entitled to any relief
Issue No.3	No
Relief	Reference petition is answered in negative as per operative part of the award.

REASONS FOR FINDINGS

ISSUES NO.1 & 2

11. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. It is particular to mention herein that this Court vide order dated 28.12.2022, observed that the case is listed for entire evidence of the petitioner since 23.02.2022. A period of

approximately one year has already been elapsed. This Court afforded as many as 7 (Seven) opportunities to the petitioner. Sufficient opportunities were afforded to the petitioner. The Ld. Counsel for the petitioner apprised to the fact that it be treated as last opportunity. No further opportunity shall be granted for recording the evidence of the petitioner. Despite the fact petitioner witnesses were not examined on behalf of the petitioner. Subsequently, this Court vide order dated 04.11.2022, has ordered that no witness are present despite the last opportunity on behalf of the petitioner. The Ld. Counsel for the petitioner prayed some more time for recording the evidence on behalf of the petitioner, the prayer is declined. The Ld. Counsel for the petitioner has already been apprised of the fact that sufficient opportunities were afforded and it be treated as last opportunity failing which shall automatically deemed to be closed. The perusal of case record would revealed that the case is listed for entire evidence of the petitioner since 23.02.2022 and a period of approximately one year has already been elapsed. This Court afforded as many as 7 (seven) opportunities to the petitioner. Sufficient opportunities were afforded to the petitioner. No further opportunity shall be granted for recording the evidence of the petitioner. Therefore, this Court is left with no other alternative but to close the evidence of the petitioner by the order of the Court and accordingly the same is hereby ordered to be closed.

13. More particularly, it is the bounded duty of the petitioner to prove his case by leading cogent and clinching evidence. Petitioner is the master of his own case and he cannot taken any undue advantages of the weaknesses of the respondents. It is the petitioner who alleges must prove his case before this Court. In the absence of any cogent and clinching proof, both in shape of oral and documentary, leads to this Court to held that the termination of the petitioner by the respondent w.e.f. 31.12.2016, without complying with the provisions of the Act is not illegal and unjustified, as alleged.

14. For the foregoing reasons, in view of discussion and finding arrived at by me hereinbefore, the present reference is ordered to be answered in negative as both the aforesaid issues are answered in negative.

ISSUE NO.3

15. In support of this issue no specific evidence has been led by the respondent, which could go to show that as to how the present petition is not maintainable in the present form especially when the same has been filed pursuant to the reference received from appropriate government. I find nothing wrong with this petition which is perfectly maintainable in the present form. Therefore, in view of no evidence led from the side of the respondent, this issue is answered against the respondent.

RELIEF

16. As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner deserve dismissal and the same is accordingly dismissed. Resultantly, the reference stands answered in negative. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 2nd day of Jan., 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 148 of 2020

Instituted on : 27-07-2020

Decided on : 02-01-2023

H.P. Rakesh Kumar s/o Shri Onkar Chand, r/o Village & P.O. Hira, Tehsil Haroli, District Una, . .Petitioner.

VERSUS

H.P. The Vice Chancellor/Registrar AP Goyal University, Shoghi-Mehli Bye Pass Road, Shimla, . .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondent : Ms. Payal Kimta, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 17.07.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether the termination of the services of Shri Rakesh Kumar s/o Shri Onkar Chand, r/o Village & PO Hira, Tehsil Haroli, District Una, HP by the Vice Chancellor/Registrar AP Goyal University, Shoghi-Mehli Bye Pass Road, Shimla, HP w.e.f. 07.09.2019 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receiving the aforesaid reference, an Industrial Dispute has arisen between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition no. 148 of 2020 and accordingly, notices were issued to both the parties pursuant to which Shri Suresh Madhyana, Advocate had appeared before this Tribunal whereas Ms. Rajni Gupta, Advocate had appeared for respondent.

3. This case has been listed for filing of claim petition on behalf of the petitioner since 18.01.2021 but despite availing 16 opportunities, the petitioner has failed to file the statement of claim. Even, after 21.11.2022, the petitioner failed to appear before this Court, which seems that the petitioner is not interested to pursue his case arising out of reference. The matter is being listed for the service of the petitioner but he has intentionally failed to appear before this Court and also failed to file any statement of claim despite having been served in accordance with law. Therefore, I am left with no other alternative but to decide the present reference petition on the basis of material, whatsoever is available on record.

4. At the very inception, it will be apt to take note of the relevant provisions of the Industrial Disputes Act, 1947. Section 2 (b) of the Act, which defines the Award as hereunder:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

5. Furthermore, Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit.

6. Whereas the State of Himachal Pradesh has framed rules called “The Industrial Disputes Rules, 1974.”

Similarly, Rule 25 thereof which reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

7. Again, Rule 25 of the Industrial Disputes Rules, 1974 authorizes the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Labour Court to presume that all the parties are present before it although, in fact, it is not true, and thus make an ex parte award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Court, in all fairness, has to imagine that the worker is present, he is unwilling to file the statement of claim, adduce evidence or argue her/his case.

8. In the instant case, neither the worker nor his Authorized Representative has put in appearance before this Tribunal and also failed to file any statement of claim despite having been served as per law. In these circumstances, the Labour Court can proceed and pass ex parte award on its merits.

9. This Court is constrained to draw an adverse inference to the factum that the petitioner is not interested in pursuing further. The case is lingering upon for the fault of none than other but the petitioner himself. Hence, this Court/Tribunal is left with no other alternate/option then to consign this reference petition to the record room and it is ordered accordingly. This reference petition will be taken up, as and when, anyone will put in appearance before this Tribunal to prosecute this reference petition and get the file revived after filing appropriate application.

10. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 2nd Day of Jan., 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 189 of 2020

Instituted on : 07-09-2020

Decided on : 02-01-2023

Subhash Chand s/o Shri Krishnu Ram, Village Barola, PO Loharwin, Tehsil Ghumarwin,
District Bilaspur, H.P. . .Petitioner.

VERSUS

The Vice Chancellor/Registrar AP Goyal University, Shoghi-Mehli Bye Pass Road, Shimla,
H.P. . .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo.

For the Respondent : Ms. Payal Kimta, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 31.08.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether the termination of the services of Shri Subhash Chand s/o Shri Krishnu Ram, Village Barola, P.O. Loharwin, Tehsil Ghumarwin, District Bilaspur, HP by the Vice Chancellor/Registrar AP Goyal University, Shoghi-Mehli Bye Pass Road, Shimla, HP w.e.f. 13.01.2020 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receiving the aforesaid reference, an Industrial Dispute has arisen between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition no. 189 of 2020 and accordingly, notices were issued to both the parties pursuant to which Shri R.K Khidta, Advocate had appeared before this Tribunal whereas Ms. Kalpana, Advocate had appeared for respondent.

3. This case has been listed for filing of claim petition on behalf of the petitioner since 15.12.2020 but despite availing 15 opportunities, the petitioner has failed to file the statement of claim. Even, after 21.11.2022, the petitioner failed to appear before this Court, which seems that the petitioner is not interested to pursue his case arising out of reference. The matter is being listed for the service of the petitioner but he has intentionally failed to appear before this Court and also failed to file any statement of claim despite having been served in accordance with law. Therefore, I am left with no other alternative but to decide the present reference petition on the basis of material, whatsoever is available on record.

4. At the very inception, it will be apt to take note of the relevant provisions of the Industrial Disputes Act, 1947. Section 2 (b) of the Act, which defines the Award as hereunder:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

5. Furthermore, Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit.

6. Whereas the State of Himachal Pradesh has framed rules called “The Industrial Disputes Rules, 1974.”

Similarly, Rule 25 thereof which reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

7. Again, Rule 25 of the Industrial Disputes Rules, 1974 authorizes the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Labour Court to presume that all the parties are present before it although, in fact, it is not true, and thus make an ex parte award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Court, in all fairness, has to imagine that the worker is present, he is unwilling to file the statement of claim, adduce evidence or argue her/his case.

8. In the instant case, neither the worker nor his Authorized Representative has put in appearance before this Tribunal and also failed to file any statement of claim despite having been served as per law. In these circumstances, the Labour Court can proceed and pass ex parte award on its merits.

9. This Court is constrained to draw an adverse inference to the factum that the petitioner is not interested in pursuing further. The case is lingering upon for the fault of none than other but the petitioner himself. Hence, this Court/Tribunal is left with no other alternate/option then to consign this reference petition to the record room and it is ordered accordingly. This reference petition will be taken up, as and when, anyone will put in appearance before this Tribunal to prosecute this reference petition and get the file revived after filing appropriate application.

10. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 2nd Day of Jan., 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 190 of 2020

Instituted on : 07-09-2020

Decided on : 02-01-2023

Mahesh Verma s/o Shri Hira singh, r/o Village Auntly, P.O. Anandpur, Shoghi, Tehsil and District Shimla, H.P. . *Petitioner.*

VERSUS

The Vice Chancellor/Registrar AP Goyal University, Shoghi-Mehli Bye Pass Road, Shimla, H.P. . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo.

For the Respondent : Ms. Payal Kimta, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 31.08.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether the termination of the services of Shri Mahesh Verma s/o Shri Hira singh R/o Village Auntly, PO Anandpur, Shoghi, Tehsil and District Shimla, HP by the Vice Chancellor/Registrar AP Goyal University, Shoghi-Mehli Bye Pass Road, Shimla, HP w.e.f. 13.01.2020 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receiving the aforesaid reference, an Industrial Dispute has arisen between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition no. 190 of 2020 and accordingly, notices were issued to both the parties pursuant to which Shri R.K Khidta, Advocate had appeared before this Tribunal whereas Ms. Kalpana, Advocate had appeared for respondent.

3. This case has been listed for filing of claim petition on behalf of the petitioner since 15.12.2020 but despite availing 15 opportunities, the petitioner has failed to file the statement of claim. Even, after 21.11.2022, the petitioner failed to appear before this Court, which seems that the petitioner is not interested to pursue his case arising out of reference. The matter is being listed for the service of the petitioner but he has intentionally failed to appear before this Court and also failed to file any statement of claim despite having been served in accordance with law. Therefore, I am left with no other alternative but to decide the present reference petition on the basis of material, whatsoever is available on record.

4. At the very inception, it will be apt to take note of the relevant provisions of the Industrial Disputes Act, 1947. Section 2 (b) of the Act, which defines the Award as hereunder:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

5. Furthermore, Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit.

6. Whereas the State of Himachal Pradesh has framed rules called “The Industrial Disputes Rules, 1974.”

Similarly, Rule 25 thereof which reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

7. Again, Rule 25 of the Industrial Disputes Rules, 1974 authorizes the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Labour Court to presume that all the parties are present before it although, infact, it is not true, and thus make an ex parte award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Court, in all fairness, has to imagine that the worker is present, he is unwilling to file the statement of claim, adduce evidence or argue her/his case.

8. In the instant case, neither the worker nor his Authorized Representative has put in appearance before this Tribunal and also failed to file any statement of claim despite having been served as per law. In these circumstances, the Labour Court can proceed and pass ex parte award on its merits.

9. This Court is constrained to draw an adverse inference to the factum that the petitioner is not interested in pursuing further. The case is lingering upon for the fault of none than other but the petitioner himself. Hence, this Court/Tribunal is left with no other alternate/option then to consign this reference petition to the record room and it is ordered accordingly. This reference petition will be taken up, as and when, anyone will put in appearance before this Tribunal to prosecute this reference petition and get the file revives after filing appropriate application.

10. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 2nd Day of Jan., 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 191 of 2020

Instituted on : 07-09-2020

Decided on : 02-01-2023

Sudesh Kumar s/o Shri Geeta Ram, r/o Village Phanewaty, PO Janedghat, Tehsil Junga,
District Shimla, H.P. . .*Petitioner.*

VERSUS

The Vice Chancellor/Registrar AP Goyal University, Shoghi-Mehli Bye Pass Road, Shimla,
H.P. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondent : Ms. Payal Kimta, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 31.08.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether the termination of the services of Shri Sudesh Kumar s/o Shri Geeta Ram r/o Village Phanewaty, P.O. Janedghat, Tehsil Junga, District Shimla, H.P. by the Vice Chancellor/Registrar AP Goyal University, Shoghi-Mehli Bye Pass Road, Shimla, HP w.e.f. 13.01.2020 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. On receiving the aforesaid reference, an Industrial Dispute has arisen between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition no. 191 of 2020 and accordingly, notices were issued to both the parties pursuant to which Shri R.K Khidta, Advocate had appeared before this Tribunal whereas Ms. Kalpana, Advocate had appeared for respondent.

3. This case has been listed for filing of claim petition on behalf of the petitioner since 15.12.2020 but despite availing 15 opportunities, the petitioner has failed to file the statement of claim. Even, after 21.11.2022, the petitioner failed to appear before this Court, which seems that the petitioner is not interested to pursue his case arising out of reference. The matter is being listed for the service of the petitioner but he has intentionally failed to appear before this Court and also failed to file any statement of claim despite having been served in accordance with law. Therefore, I am left with no other alternative but to decide the present reference petition on the basis of material, whatsoever is available on record.

4. At the very inception, it will be apt to take note of the relevant provisions of the Industrial Disputes Act, 1947. Section 2 (b) of the Act, which defines the Award as hereunder:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

5. Furthermore, Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit.

6. Whereas the State of Himachal Pradesh has framed rules called “The Industrial Disputes Rules, 1974.”

Similarly, Rule 25 thereof which reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

7. Again, Rule 25 of the Industrial Disputes Rules, 1974 authorizes the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Labour Court to presume that all the parties are present before it although, infact, it is not true, and thus make an ex parte award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Court, in all fairness, has to imagine that the worker is present, he is unwilling to file the statement of claim, adduce evidence or argue her/his case.

8. In the instant case, neither the worker nor his Authorized Representative has put in appearance before this Tribunal and also failed to file any statement of claim despite having been served as per law. In these circumstances, the Labour Court can proceed and pass ex parte award on its merits.

9. This Court is constrained to draw an adverse inference to the factum that the petitioner is not interested in pursuing further. The case is lingering upon for the fault of none than other but the petitioner himself. Hence, this Court/Tribunal is left with no other alternate/option then to consign this reference petition to the record room and it is ordered accordingly. This reference petition will be taken up, as and when, anyone will put in appearance before this Tribunal to prosecute this reference petition and get the file revives after filing appropriate application.

10. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 2nd Day of Jan., 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 151 of 2019

Instituted on : 11-12-2019

Decided on : 02-01-2023

Sant Ram s/o Shri Dhani Ram, r/o Village Dharamkot, Gram Panchyat Badripur, Tehsil Paonta Sahib, District Sirmaur, H.P. . .*Petitioner.*

VERSUS

The Factory Manager M/s M. Sea Pharmaceuticals Pvt. Ltd. Surajpur, Tehsil Paonta Sahib, District Sirmaur, H.P. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Nemo

For the Respondent : Shri Virender Chauhan, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 29.11.2019, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether the termination of the services of Shri Sant Ram S/o Shri Dhani Ram, r/o Village Dharamkot, Gram Panchyat Badripur, Tehsil Paonta Sahib, District Sirmaur, HP by the Factory Manager M/s M. Sea Pharmaceuticals Pvt. Ltd. Surajpur, Tehsil Paonta Sahib, District Sirmaur, HP w.e.f. 23.10.2018 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement, amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?”

2. On receiving the aforesaid reference, an Industrial Dispute has arisen between the parties on account of the reference received from the appropriate government, which was duly registered with this office, as Reference Petition no. 151 of 2019 and accordingly, notices were issued to both the parties pursuant to which Shri Virender Chauhan, Advocate had appeared for respondent whereas after issuing notices eleven times, the petitioner had appeared in person on 17.11.2021.

3. This case has been listed for filing of claim petition on behalf of the petitioner since 17.11.2021 but despite availing 10 opportunities, the petitioner has failed to file the statement of claim. Even, after 19.11.2022, the petitioner failed to appear before this Court, which seems that the petitioner is not interested to pursue his case arising out of reference. The matter is being listed for the service of the petitioner but he has intentionally failed to appear before this Court and also failed to file any statement of claim despite having been served in accordance with law. Therefore, I am left with no other alternative but to decide the present reference petition on the basis of material, whatsoever is available on record.

4. At the very inception, it will be apt to take note of the relevant provisions of the Industrial Disputes Act, 1947. Section 2 (b) of the Act, which defines the Award as hereunder:-

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

5. Furthermore, Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit.

6. Whereas the State of Himachal Pradesh has framed rules called “The Industrial Disputes Rules, 1974.”

Similarly, Rule 25 thereof which reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

7. Again, Rule 25 of the Industrial Disputes Rules, 1974 authorizes the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Labour Court to presume that all the parties are present before it although, infact, it is not true, and thus make an ex parte award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Court, in all fairness, has to imagine that the worker is present, he is unwilling to file the statement of claim, adduce evidence or argue her/his case.

8. In the instant case, neither the worker nor his Authorized Representative has put in appearance before this Tribunal and also failed to file any statement of claim despite having been served as per law. In these circumstances, the Labour Court can proceed and pass ex parte award on its merits.

9. This Court is constrained to draw an adverse inference to the factum that the petitioner is not interested in pursuing further. The case is lingering upon for the fault of none than other but the petitioner himself. Hence, this Court/Tribunal is left with no other alternate/option then to consign this reference petition to the record room and it is ordered accordingly. This reference petition will be taken up, as and when, anyone will put in appearance before this Tribunal to prosecute this reference petition and get the file revives after filing appropriate application.

10. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 2nd Day of Jan., 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

ReferenceNumber : 90 of 2020

Instituted on : 13-07-2020

Decided on : 02-01-2023

Rakesh Kumar s/o Late Shri Balak Ram, r/o VPO Madhwani, Tehsil Kumarsain, District Shimla H.P. . *Petitioner.*

VERSUS

The Director M/s Shimla Satellite Cabel Pvt. Ltd., Khalini Shimla, H.P. . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Ms. Reeta Goel, Advocate

For respondent : Shri Sandeep Dutta, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 18.05.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the services of Sh. Rakesh Kumar s/o Late Shri Balak Ram, r/o VPO Madhwani, Tehsil Kumarsain, District Shimla HP (C/o KD Sharma, Laxmi Niwas, Dhalli, Shimla) w.e.f. 19.04.2019 by the Director M/s Shimla Satellite Cabel Pvt Ltd., Khalini, Shimla, HP without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including reinstatement, amount of back wages, past service benefits and compensation the above aggrieved workman, is entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has appeared in person.

3. To the fore Shri Manish Khanna, Proprietor of respondent has stated at the bar that the Industrial Dispute raised on behalf of the petitioner stood amicably resolved by way of an amicable settlement and the respondent has agreed to pay an amount of Rs. 47,000/- (Rs. Forty Seven Thousand only) towards full and final settlement amount of the claim in lieu of reinstatement, back-wages, past service benefits etc. He has placed on record copy of cheque (P-1), copy of Aadhar card of petitioner (P-2), copy of his Aadhar card (P-3) and copy of registration certificate (P-4) on record. To this effect his statement recorded separately and placed on record.

4. Vide separate statement the petitioner has stated that the industrial dispute raised on his behalf stood amicably resolved by way of an amicable settlement. As per the settlement the respondent/company is ready and willing to make him the full and final payment towards lump sum compensation amounting to Rs. 47,000/- (Forty Five Thousand Only), which the acceptable to him. He further stated that the aforesaid amount has been received by him today in the Court through

Cheque no. 062634 dated 16.12.2022. Nothing survives in the present petition. The above said statement was read over and explained to him which is duly accepted by him.

5. Thus, keeping in view that attendant facts and circumstances of the case vis- a -vis perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and he has been paid a sum of **Rs. 47,000/- (Rs. Forty Seven Thousand Only) through cheque No. 062634 dated 16.12.2022** as full and final settlement amount of the claim today in the Court. Therefore, the industrial dispute raised from the side of the petitioner arising out of reference no. 90/2020, stood amicably settled between the parties.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying Rs. 47,000/- (Forty Seven Thousand Only) through cheque No. 062634 dated 16.12.2022. This a part, the petitioner is also entitled for his/her admissible legal dues as per law such as EPF, ESI etc.** The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record i.e. copy of cheque (P-1), copy of Aadhar card of petitioner (P-2), copy of his Aadhar card (P-3) and copy of registration certificate (P-4), which shall form the integral part and parcel of this award.

7. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced : 02-01-2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 91 of 2020

Instituted on : 13-07-2020

Decided on : 02-01-2023

Ram Krishan Sharma s/o Late Shri Dharam Dass Sharma, r/o Village Pujarli, P.O. Beolia, Tehsil & District Shimla, H.P. . *Petitioner.*

VERSUS

The Director M/s Shimla Satellite Cable Pvt. Ltd., Khalini, Shimla, H.P. . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Ms. Reeta Goel, Advocate

For respondent : Shri Sandeep Dutta, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 18.05.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the services of Sh. Ram Krishan Sharma s/o Late Shri Dharam Dass Sharma, r/o Village Pujarli, P.O. Beolia, Tehsil & District Shimla, H.P. w.e.f. 26.04.2019 by the Director M/s Shimla Satellite Cable Pvt. Ltd., Khalini, Shimla, HP without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including reinstatement, amount of back wages, past service benefits and compensation the above aggrieved workman, is entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has appeared in person.

3. To the fore Shri Manish Khanna, Proprietor of respondent has stated at the bar that the Industrial Dispute raised on behalf of the petitioner stood amicably resolved by way of an amicable settlement and the respondent has agreed to pay an amount of Rs. 47,000/- (Rs. Forty Seven Thousand only) towards full and final settlement amount of the claim in lieu of reinstatement, back-wages, past service benefits etc. He has placed on record copy of cheque (P-1), copy of Aadhar card of petitioner (P-2), copy of his Aadhar card (P-3) and copy of registration certificate (P-4) on record. To this effect his statement recorded separately and placed on record.

4. Vide separate statement the petitioner has stated that the industrial dispute raised on his behalf stood amicably resolved by way of an amicable settlement. As per the settlement the respondent/company is ready and willing to make him the full and final payment towards lump sum compensation amounting to Rs. 47,000/- (Forty Five Thousand Only), which the acceptable to him. He further stated that the aforesaid amount has been received by him today in the Court through Cheque no. 062633 dated 16.12.2022. Nothing survives in the present petition. The above said statement was read over and explained to him which is duly accepted by him.

5. Thus, keeping in view that attendant facts and circumstances of the case vis- a -vis perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and he has been paid a sum of **Rs. 47,000/- (Rs. Forty Seven Thousand Only) through cheque No. 062633 dated 16.12.2022** as full and final settlement amount of the claim today in the Court. Therefore, the industrial dispute raised from the side of the petitioner arising out of reference no. 91/2020, stood amicably settled between the parties.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying Rs. 47,000/- (Forty Seven Thousand Only) through cheque No. 062633 dated 16.12.2022. This a part, the petitioner is also entitled for his/her admissible legal dues as per law such as EPF, ESI etc. The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record i.e. copy of cheque (P-1), copy of Aadhar card of petitioner (P-2), copy of his Aadhar card (P-3) and copy of registration certificate (P-4), which shall form the integral part and parcel of this award.

7. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced : 02-01-2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 67 of 2020

Instituted on : 23-06-2020

Decided on : 02-01-2023

Man Mohan, s/o Shri Mast Ram, r/o Village Khanai, P.O. Ekhho, Tehsil Baddi, District Solan, H.P. . *Petitioner.*

VERSUS

1. The Executive Engineer, Irrigation & Public Health Division, Nalagarh, District Solan, HP.
2. Jaswant Singh, VPO Ramshehar, Tehsil Nalagarh, District Solan, H.P.
3. Amarjit Singh, VPO Ramshehar, Tehsil Nalagarh, District Solan, H.P. . *Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri J.C Bhardwaj, AR

For respondent No.1 : Ms. Reena Chauhan, Dy. DA

For respondents No. 2 & 3 : Ex-parte

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 15.06.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the services of Sh. Man Mohan, s/o Shri Mast Ram, r/o Village Khanai, P.O. Ekhho, Tehsil Baddi, District Solan, H.P. w.e.f. 01.09.2018 by Sh. Jaswant Singh, R/O VPO Ramshahar, Tehsil Nalagarh, Distt. Solan, H.P (Contractor), Sh. Rajinder Singh R/O Village Amru, P.O Baswani, Tehsil Baddi, Distt. Solan, H.P. (Contractor) and the Executive Engineer, Irrigation & Public Health Division, Nalagarh, Distt. Solan, H.P (Principal Employer) without complying with the

provisions of the Industrial Disputes Act 1947, as alleged, is legal and justified? If not, what relief including reinstatement, amount of back wages, past service benefits and compensation the above ex-worker is entitled to from the above employer?"

2. The case of the petitioner as it emerges from the statement of claim is that he was engaged as Pump Operator at LWSS Waldu Khad Khad-II, Ghared Dhar, Amroh in the year 2005 but his name was not enrolled with respondent no.1 department and was enrolled with so called contractors *i.e.* respondents no.1 & 2. The legitimate dues of the petitioner were not paid by the respondents. The name of the petitioner was transferred by the principal employer from his roll to the rolls of name lender contractor without his consent. The petitioner used to work 24 hours a day without any break and in violation of Labour Law Legislations. The name lender contractors have never obtained any valid licence nor the principal employer (respondent no.1) was ever registered under the Contract Labour (Regulation and Abolition) Act. The petitioner was engaged in permanent nature of work. He had worked continuously for 8 years and completed more than 240 working days in a calendar year. There is violation of sections 25-B, 25-F, 25-G & 25-H of the Act. The work and conduct of the petitioner was satisfactory and as such he was never served with any notice, chargesheet etc. The petitioner has been deprived from his right of livelihood. The services of the petitioner were terminated in an arbitrary manner. The said termination falls under the ambit of section 2(oo) of the Act.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

“Now, it is therefore prayed that your honour may kindly be pleased to award reinstatement to the petitioner/workman in the employment of the respondent No.1 *i.e.* Executive Engineer, HP Irrigation and Public Health Division, Nalagarh, District Solan, with retrospective effect *i.e.* from the date of his illegal removal/termination on 01.09.2018 with full back-wages, seniority and other consequential service benefits throughout and with costs.”

4. The lis was resisted and contested by respondent No.1 by filing written reply on inter-alia raising preliminary objections of maintainability, barred by limitation and no cause of action.

5. On merits, it is submitted that the petitioner was engaged by respondent no.2 (contractor) as due to shortage of staff, the respondent department has floated the tenders for the smooth operation and maintenance of Lift Water Supply Scheme Waldu Khad Dhar Amroa during the year 2005 and as such the work was awarded to respondent no.2 who has quoted the lowest rate for the work and thereafter the work was awarded to respondent no.3. The whole responsibility for deployment of staff/workers on the work lies with the contractors. It is further submitted that both the contractors *i.e.* respondent no.2 and 3 are registered with the respondent department and on the basis of registration they can participate in tendering process. The respondent department neither engaged the services of the petitioner nor disengaged him from services. It is denied that the respondent department had adopted the formula of hire and fire. It is therefore prayed that the claim filed by the petitioner may kindly be dismissed.

6. It is pertinent to mention here that both the contractors *i.e.* respondent no.1 and 2 were duly served in accordance with law but they have failed to appear before this Court despite having been served, hence, both the respondents were proceeded against ex-parte.

7. While filing rejoinder, the petitioner controverted the averments made thereto in the replies filed by respondents and reaffirmed and reiterated those raised in the claim petition.

8. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 25.02.2022, as under:

1. Whether the termination of the services of the petitioner by the respondents w.e.f. 01.09.2018, without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified, as alleged? . . .*OPP*.
2. If issue no.1 is proved in affirmative, then what relief of service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the petition is not maintainable, as alleged? . . .*OPR*.
4. Whether the petition is barred by limitation as alleged? . . .*OPR*.
5. Relief

9. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

10. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

11. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No. 1	Yes
Issue No.2	Entitled to lump sum compensation
Issue No.3	No
Issue No.4	No
Relief.	Reference is partly allowed awarding lump sum compensation to the petitioner.

REASONS FOR FINDINGS

ISSUES NO.1 & 2.

12. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

13. In order to substantiate its case, the petitioner has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition. He also tendered into evidence copies of log book (PW-1/B).

14. In cross-examination, he denied that he was engaged by the contractor in water supply scheme. He further denied that the wages and other service conditions were looked-after by the contractor. He denied that the log book was given to him by the contractor. He also denied that he was the employee of contractor who used to pay him wages. He denied that it is the responsibility of the contractor to grant him service benefits and not the department.

15. In order to rebut, the respondent No.1 has examined Shri Chaman Lal, Assistant Engineer of respondent no.1 as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence agreement (R-1) and complaint (R-2), on record

16. In cross-examination, on behalf of the petitioner he admitted that the pump was under the supervision of the department. He denied that the workers are working continuously since 2005 to 2018. He further denied that the contractor was only name lender contractor. He admitted that the water schemes are in working order and supplying the water to the villagers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Shri J.C. Bhardwaj, AR for the petitioner has contended with all vehemence that the petitioner there is a clear cut violation of section 25-F of the Act as the services of the petitioner were terminated by an oral order without complying with the provisions of the Act. The services of the petitioner were engaged by the respondent no.1 but he was shown to be engaged through respondents no.2 and 3, which is nothing but amounting to camouflage. The name of the petitioner was illegally transferred on the rolls of contractors by the department, therefore, the termination of the services of the petitioner amounts to unfair labour practice, hence, he is entitled to be reinstated in service along-with all consequential service benefits including full back-wages. He has also relied upon Chemical Mazdoor Panchayat Vs. IOC Ltd., 2017 LLR 785, New India Insurance Co. Vs. Rakesh 2017 LLR 787, Umrula Gram Panchayat Vs. The Secretary 2015 LLR449, Bhilwada Dugdh Utpadak Vs. Vinod Kumar 2011 LLR 1079, Air India Vs. P O CGIT, 2011 LLR 1080, Gauri Shankar Vs. State of Rajasthan 2015 LLR 785 and K S Ravinderan Vs. New India 2015 LLR 790.

19. *Per contra*, Shri Dy. DA for the respondent no.1 urged that services of the petitioner were engaged by the respondents no.2 and 3 as the respondent department has floated the tenders for the smooth operation and maintenance of Lift Water Supply Scheme and the work was awarded to respondent no.2, who has quoted the lowest rate for the work and thereafter the work was awarded to respondent no.3. The whole responsibility for deployment of staff/workers on the work lies with the contractors. The respondent department has nothing to do with the engagement and termination of the petitioner. The petitioner was the workman of the contractors. He prayed for the dismissal of the claim petition.

20. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondents and have also scrutinized the entire case record with minute care, caution and circumspection.

21. Thus, from a careful examination of the entire case record, it is manifestly clear on record that the only grouse raised from the side of the petitioner is that his services were engaged during the month of April 2005 as Pump Operator and he had remained in service till his services were illegally terminated by the respondent no.1 department. It is further pleaded case of the petitioner that he was not enrolled/entered on the rolls of the respondent no.1, but his name was shown to be engaged through the name lender contractor. On the other hand, the case set up by the respondent no.1 department is that the services of the petitioner have never been engaged by the department. The services of the petitioner were engaged by the contractors i.e the respondents no. 2 & 3, as due to shortage of staff, the respondent department had outsourced the work of water supply scheme for proper running after awarding the work and by completing tender process to private contractors. Since, the petitioner was not at all the employee of respondent department, hence, it had no concern with the engagement or disengagement of the services of the petitioner. It is settled proposition of law that the initial burden lies on the party who alleges the same, therefore,

it is the bounden duty of the petitioner to prove the fact that he was initially engaged by the principal employer (respondent department) during the month of April 2005. In order to discharge the onus, the petitioner had mainly relied upon the documentary proof i.e log book (PW-1/B) allegedly issued in the name of the petitioner. The perusal of log book (PW-1/B), goes to demonstrate that neither the same has been verified nor issued by the respondent department. The petitioner has also miserably failed to place on record any of the cogent proof i.e appointment letter, muster roll or any other record, which could go to establish that the services of the petitioner have been engaged by the department and none other else. It has duly been established on record that the work of water supply scheme was awarded to the private contractors and their names have been duly registered with the department. It is also proved on record from the agreement dated 21.01.2005 (R-1) that the work of water supply scheme was duly awarded to the respondents no.2 & 3. Thus, it can be safely concluded that the petitioner was deputed with the respondent no.1, and definitely he was engaged and the employee of respondents no.2 & 3 contractors only. Moreover, the Industrial Court have no jurisdiction to determine the question as to whether the contract labour should be abolished or not, the same being within the exclusive domain of appropriate government.

22. Now, it has to be seen as to whether the services of the petitioner have been terminated illegally without following the mandatory provisions of the Act by respondents No.2 & 3 or not?

23. The next very question, which arises for determination that whether the termination of the services of the petitioner w.e.f. 01.09.2018, is violative of the provisions of the Act. It is the case of the petitioner that he was engaged as Pump Operator during the the year 2005 and he had worked as such in that capacity till 1.9.2018 and thereafter his services were terminated without complying with the mandatory provisions of the Act as no notice as required under section has not been issued to him nor he was paid the compensation. From the aforesaid deposition of the petitioner, it is clear that he had completed more than 240 days in each and every calendar year, with the respondents no.2 & 3 (contractors). Since, the respondents no.2 & 3 (contractors) have failed to appear before this Tribunal in order to counter the allegations of the petitioner by leading cogent and satisfactory evidence documentary and despite having been served in accordance with law, therefore, this Tribunal has no other alternate but to believe the version of the petitioner. It is also an admitted position on record that the contractor while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondents No. 2 & 3 (contractors), while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the minimum requirement of days as fixed by the Government, hence, he is also entitled for the protection of section 25-F of the Act. There is nothing on record, which could remotely suggest that the respondents no.2 & 3 (contractors) have duly complied with the provisions of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, **which provides as under:**

"25-F: No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;**
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and**

- (c) **notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".**

24. So, in view of this enabling provision of the Act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part, reads as under:

"25B. Definition of continuous service. For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;**
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—**
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-**
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and**
 - (ii) two hundred and forty days, in any other case...."**

25. Since, the petitioner has stated to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act, were not followed or complied with by the respondents in the latter and spirit. The respondents no.2 & 3 did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner. The petitioner is the engineer of his own case. He is to prove the case by leading cogent and clinching proof to the same. The petitioner cannot be allowed to take undue advantages out of the weaknesses of the respondents. Simple on this score that the log books, the solitary proof rendered by the petitioner were duly issued and signed by the officers of the Government, SDO or XEN, the engagement of the petitioner at the behest of the contractor shall not be converted into the engagement made by the Government. It is alleged from the side of the petitioner that the name of the petitioner was entered on the roll of name lender contractor who never supervised the work. The work was supervised by J.E, SDO or XEN. The undue benefit by inserting the provisions of contract Labour (Regulation and Abolition) Act, 1970, shall not change the rule of the game, for the reasons that the petitioner was engaged by the contractor. It is the contractor who exercises the over all control and supervision to the services of the petitioner.

26. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

27. Now, the question arises as to what relief, the workman is entitled to? Their Lordships of Hon'ble Supreme Court in an authority reported as **The Workmen of M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813**, has observed that after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in **The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742** within the judicial decision of a Labour Court of Tribunal."

28. Similarly, Their Lordship of Hon'ble Delhi High Court in another authority reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709**, Hon'ble **Delhi High Court** dealt with the question of reinstatement and back wages has observed that the decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages.

29. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

30. Moreso, their Lordships of Hon'ble Supreme Court in another authority reported as **M. L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413**, Hon'ble Supreme Court has observed that though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. **Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattacharya & Anr. (2002 (6) SCC 41)**, **Rajendra Prasad Arya Vs. State of Bihar (200 (9) SCC 514)**, **Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh (2005 (3) SCC 232)**, **Haryana State Cooperative Land Development Bank Vs. Neelam (2005 (5) SCC 91)**, **Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors. (2005 (5) SCC 100)** and **Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr. (2005 (5) SCC 124)**, we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view.

31. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479**, wherein the Hon'ble Supreme Court, observed that the earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."

32. In the instant case, the petitioner was engaged by contractor i.e respondents no.2 and 3 and thereafter he was deployed with respondent no.1. The petitioner had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respondent no.1, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

33. Recent developments, particularly the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as

Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177 and further reiterated lately in P. Karupiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnsta, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294.

34. In the exposition of law enumerated hereinbefore, now, I would like to award the lump sum compensation to the petitioner in the attendant facts and circumstances of the case. With all humility, there is no enunciation on the point of law shown to me by Ld. AR for the petitioner. However, each case has its own merits. The decision of the Court must depend upon the attendant facts, circumstances and evidence on record.

35. For the foregoing reasons, keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for a lump sum compensation amount of **₹ 70,000/- (₹ Seventy Thousand) as lump sum compensation** from the respondents no.2 & 3, who are jointly liable to pay the awarded amount to the petitioner. Accordingly, both these issues are decided partly in favour of the petitioner and against respondents No.2 & 3.

ISSUES NO. 3 & 4.

36. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

37. In order to prove these issue, no specific evidence has been led from the side of the respondent No.1, which could go to show as to how the present petition has not been maintainable and the same is barred by limitation. Moreover, the present petition has been filed by the petitioner pursuant to reference received from the appropriate government for legal adjudication. I find no illegality in the present petition, which is perfectly maintainable in the present form. Accordingly, this issue is answered in favour of the petitioner and against the respondents.

RELIEF

38. As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner succeeds and is hereby allowed and the petitioner is awarded lump sum compensation of **₹ 70,000/- (Rs. Seventy Thousand), to the workman, to be paid by the respondents no. 2 & 3 i.e. Jaswant Singh VPO Ramshehar, Tehsil Nalagarh, District Solan, HP and Amarjit Singh, VPO Ramshehar, Tehsil Nalagarh, District Solan, HP jointly and severally by both the parties, within a period of two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondents No. 2 & 3 to the workman. This apart, it is expressly made clear that besides lump sum compensation, the petitioner is also entitled for all his legal dues i.e gratuity, leave encashment, EPF, ESI etc., admissible, if any, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 2nd day of Jan., 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 68 of 2020

Instituted on : 23-06-2020

Decided on : 02-01-2023

Krishan Chand s/o Shri Babu Ram, r/o Village Bragu, P.O. Patta, Tehsil Kasauli, District Solan, HP. . *Petitioner.*

VERSUS

1. The Executive Engineer, Irrigation & Public Health Division, Nalagarh, District Solan, H.P.
2. Jaswant singh VPO Ramshehar, Tehsil Nalagarh, District Solan, H.P.
3. Amarjit Singh VPO Ramshehar, Tehsil Nalagarh, District Solan, H.P. . *Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri J.C Bhardwaj, AR

For respondent No.1 : Ms. Reena Chauhan, Dy. DA

For respondents No. 2& 3 : Ex-parte

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 15.06.2020, under section 10 of the Industrial Disputes Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication:

“Whether termination of the services of Sh. Krishan Chand s/o Shri Babu Ram, r/o Village Bragu, P.O. Patta, Tehsil Kasauli, District Solan, H.P. w.e.f. 04.09.2018 by Sh. Jaswant Singh, r/o VPO Ramshahar, Tehsil Nalagarh, Distt. Solan, H.P (Contractor), Sh. Amarjeet Singh, r/o VPO Ramshahar, Tehsil Nalagarh, Distt. Solan, H.P. (Contractor) and the Executive Engineer, Irrigation & Public Health Division, Nalagarh, Distt. Solan, H.P. (Principal Employer) without complying with the provisions of the Industrial Disputes Act 1947, as alleged, is legal and justified? If not, what relief including reinstatement, amount of back wages, past service benefits and compensation the above ex-worker is entitled to from the above employer?”

2. The case of the petitioner as it emerges from the statement of claim is that he was engaged as Chowkidar but he worked as Pump Operator at LWSS Kandhol-Tuzarin Panchyat Badhaunighat in the month of April, 2010 but his name was not enrolled with respondent no.1 department and was enrolled with so called contractors i.e respondents no.1 & 2. The legitimate dues of the petitioner were not paid by the respondents. The name of the petitioner was transferred by the principal employer from his roll to the rolls of name lender contractor without his consent. The petitioner used to work 24 hours a day without any break and in violation of Labour Law

Legislations. The name lender contractors have never obtained any valid licence nor the principal employer (respondent no.1) was ever registered under the Contract Labour (Regulation and Abolition) Act. The petitioner was engaged in permanent nature of work. He had worked continuously for 8 years and completed more than 240 working days in a calendar year. There is violation of sections 25-B, 25-F, 25-G & 25-H of the Act. The work and conduct of the petitioner was satisfactory and as such he was never served with any notice, chargesheet etc. The petitioner has been deprived from his right of livelihood. The services of the petitioner were terminated in an arbitrary manner. The said termination falls under the ambit of section 2(oo) of the Act.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

“Now, it is therefore prayed that your honour may kindly be pleased to award reinstatement to the petitioner/workman in the employment of the respondent No.1 i.e Executive Engineer, HP Irrigation and Public Health Division, Nalagarh, District Solan, with retrospective effect i.e from the date of his illegal removal/termination on 04.09.2018 with full back-wages, seniority and other consequential service benefits throughout and with costs.”

4. The lis was resisted and contested by respondent No.1 by filing written reply on inter-alia raising preliminary objections of maintainability, barred by limitation and no cause of action.

5. On merits, it is submitted that the petitioner was engaged by respondent no.2 (contractor) as due to shortage of staff, the respondent department has floated the tenders for the smooth operation and maintenance of Lift Water Supply Scheme Kandhol, Tuzar during the year 2010 and as such the work was awarded to respondent no.2 who has quoted the lowest rate for the work and thereafter the work was awarded to respondent no.3. The whole responsibility for deployment of staff/workers on the work lies with the contractors. It is further submitted that both the contractors i.e respondent no.2 and 3 are registered with the respondent department and on the basis of registration they can participate in tendering process. The respondent department neither engaged the services of the petitioner nor disengaged him from services. It is denied that the respondent department had adopted the formula of hire and fire. It is therefore prayed that the claim filed by the petitioner may kindly be dismissed.

6. It is pertinent to mention here that both the contractors i.e respondent no.1 and 2 were duly served in accordance with law but they have failed to appear before this Court despite having been served, hence, both the respondents were proceeded against ex-parte.

7. While filing rejoinder, the petitioner controverted the averments made thereto in the replies filed by respondents and reaffirmed and reiterated those raised in the claim petition.

8. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 25.02.2022, as under:

1. Whether the termination of the services of the petitioner by the respondents w.e.f. 04.09.2018, without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified, as alleged? ..OPP.
2. If issue no.1 is proved in affirmative, then what relief of service benefits the petitioner is entitled to? ..OPP.
3. Whether the petition is not maintainable, as alleged? ..OPR.

4. Whether the petition is barred by limitation as alleged? . . . OPR.

5. Relief

9. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

10. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

11. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No.1	Yes
Issue No.2	Entitled to lump sum compensation
Issue No.3	No
Issue No.4	No
Relief.	Reference is partly allowed awarding lump sum compensation to the petitioner.

REASONS FOR FINDINGS

ISSUES NO.1 & 2.

12. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

13. In order to substantiate its case, the petitioner has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition. He also tendered into evidence copies of log book (PW-1/B).

14. In cross-examination, he denied that he was engaged by the contractor in water supply scheme. He further denied that the wages and other service conditions were looked-after by the contractor. He denied that the log book was given to him by the contractor. He also denied that he was the employee of contractor who used to pay him wages. He denied that it is the responsibility of the contractor to grant him service benefits and not the department.

15. In order to rebut, the respondent No.1 has examined Shri Praveen Kumar, Assistant Engineer of respondent no.1 as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence agreement (R-1), complaint (R-2), award letter dated 03.05.2018 (R-3) and award letter dated 03.02.2016 (R-4).

16. In cross-examination, on behalf of petitioner he admitted that the pump was under the supervision of the department. He denied that the workers are working continuously since 2010 to 2018. He further denied that the contractor was only name lender contractor. He admitted that the water schemes are in working order and supplying the water to the villagers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Shri J.C. Bhardwaj, AR for the petitioner has contended with all vehemence that the petitioner there is a clear cut violation of section 25-F of the Act as the services of the peittioner were terminated by an oral order without complying with the provisions of the Act. The services of the petitioner were engaged by the respondent no.1 but he was shown to be engaged through respondents no.2 and 3, which is nothing but amouting to camouflague. The name of the petitioner was illegally transferred on the rolls of contractors by the department, therefore, the termination of the services of the petitioner amounts to unfair labour practice, hence, he is entitled to be reinstated in service along-with all consequential service benefits including full back-wages. He has also relied upon Chemical Mazsdoor Panchyat Vs. IOC Ltd., 2017 LLR 785, New India Insurance Co. Vs. Rakesh 2017 LLR 787, Umralla Gram Panchyat Vs. The Secretary 2015 LLR449, Bhilwada Dugdh Utpadak Vs. Vinod Kumar 2011 LLR 1079, Air India Vs. P O CGIT, 2011 LLR 1080, Gauri Shankar Vs. State of Rajasthan 2015 LLR 785 and K S Ravinderan Vs. New India 2015 LLR 790.

19. *Per contra*, Shri Dy. DA for the respondent no.1 urged that services of the petitioner were engaged by the respondents no.2 and 3 as the respondent department has floated the tenders for the smooth operation and maintenance of Lift Water Supply Scheme and the work was awarded to respondent no.2, who has quoted the lowest rate for the work and thereafter the work was awarded to respondent no.3. The whole responsibility for deployment of staff/workers on the work lies with the contractors. The respondent department has nothing to do with the engagement and termination of the petitioner. The petitioner was the workman of the contractors. He prayed for the dismissal of the claim petition.

20. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondents and have also scrutinized the entire case record with minute care, caution and circumspection.

21. Thus, from a careful examination of the entire case record, it is manifestly clear on record that the only grouse raised from the side of the petitioner is that his services were engaged during the month of April 2010 as Chowkidar but he worked as Pump Operator with the principal employer i.e respondent department and he had remained in service till his services were illegally terminated by the respondent no.1 department. It is further pleaded case of the petitioner that he was not enrolled/entered on the rolls of the respondent no.1, but his name was shown to be engaged through the name lender contractor. On the other hand, the case set up by the respondent no.1 department is that the services of the petitioner have never been engaged by the department. The services of the petitioner were enaged by the contractors i.e the respondents no. 2 & 3, as due to shortage of staff, the respdonent deaprtment had outsourced the work of water supply scheme for proper running after awarding the work and by completing tender process to private contractors. Since, the petitioner was not at all the employee of respodnent department, hence, it had no concern with the engagement or disengagement of the services of the petitioner. It is settled preposition of law that the initial burden lies on the party who alleges the same, therefore, it is the bounden duty of the petitioner to prove the fact that he was initially engaged by the principal emplyer (respodnent department) during the month of April 2010. In order to discharge the onus, the petitioner had mainly relied upon the documentary proof i.e log book (PW-1/B) allegedly issued in the name of the petitioner. The persual of log book (PW-1/B), goes to demonstrate that neither the same has been verified nor issued by the respondent department. The petitioner has also miserably failed to place on record any of the cogent proof i.e appointment letter, mustr roll or any other record, which could go to establish that the services of the petitioner have been engaged by the department and none other else. It has duly been established on record that the work of water supply scheme was awarded to the private contractors and their names have been duly registered with the department.

It is also proved on record from the agreement dated 27.3.2010 (R-1), award letter dated 3.5.2018 (R-3) and award letter dated 3.2.2016 (R-4) that the work of water supply scheme was duly awarded to the respondents no. 2 & 3. Thus, it can be safely concluded that the petitioner was deputed with the respondent no.1, and definitely he was engaged and the employee of respondents no. 2 & 3 contractors only. Moreover, the Industrial Court have no jurisdiction to determine the question as to whether the contract labour should be abolished or not, the same being within the exclusive domain of appropriate government.

22. Now, it has to be seen as to whether the services of the petitioner have been terminated illegally without following the mandatory provisions of the Act by respondents No. 2 & 3 or not?

23. The next very question, which arises for determination that whether the termination of the services of the petitioner w.e.f. 04.09.2018, is violative of the provisions of the Act. It is the case of the petitioner that he was engaged as chowkidar during the month of April, 2010 and he had worked as such in that capacity till 4.9.2018 and thereafter his services were terminated without complying with the mandatory provisions of the Act as no notice as required under section has not been issued to him nor he was paid the compensation. From the aforesaid deposition of the petitioner, it is clear that he had completed more than 240 days in each and every calendar year, with the respondents no. 2 & 3 (contractors). Since, the respondents no.2 & 3 (contractors) have failed to appear before this Tribunal in order to counter the allegations of the petitioner by leading cogent and satisfactory evidence documentary and despite having been served in accordance with law, therefore, this Tribunal has no other alternate but to believe the version of the petitioner. It is also an admitted position on record that the contractor while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondents No. 2 & 3 (contractors), while terminating the services of the petitioner has to fall within the four corners of the definition of “retrenchment” as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the minimum requirement of days as fixed by the Government, hence, he is also entitled for the protection of section 25-F of the Act. There is nothing on record, which could remotely suggest that the respondents no.2 & 3 (contractors) have duly complied with the provisions of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, **which provides as under:**

"25-F: No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;**
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and**
- (c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".**

24. So, in view of this enabling provision of the Act, no workman employed in any industry, who has been in “continuous service” for not less than one year, can be retrenched by the employer unless he has been given one month’s notice in writing indicating the reasons for

retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25-B of the Act, which in its material part, reads as under:

“25B. Definition of continuous service. For the purposes of this Chapter,—

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-*
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-*
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and*
 - (ii) two hundred and forty days, in any other case....”*

25. Since, the petitioner has stated to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act, were not followed or complied with by the respondents in the latter and spirit. The respondents no.2 &3 did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner. The petitioner is the engineer of his own case. He is to prove the case by leading cogent and clinching proof to the same. The petitioner cannot be allowed to take undue advantages out of the weaknesses of the respondents. Simple on this score that the log books, the solitary proof rendered by the petitioner were duly issued and signed by the officers of the Government, SDO or XEN, the engagement of the petitioner at the behest of the contractor shall not be converted into the engagement made by the Government. It is alleged from the side of the petitioner that the name of the petitioner was entered on the roll of name lender contractor who never supervised the work. The work was supervised by J.E, SDO or XEN. The undue benefit by inserting the provisions of contract Labour (Regulation and Abolition) Act, 1970, shall not change the rule of the game, for the reasons that the petitioner was engaged by the contractor. It is the contractor who exercises the over all control and supervision to the services of the petitioner.

26. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

27. Now, the question arises as to what relief, the workman is entitled to? Their Lordships of Hon'ble Supreme Court in an authority reported as The Workmen of M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813, has observed that after setting aside the order of dismissal, whether a workman should be reinstated or paid

compensation is, as held by this Court in *The Management of Panitole Tea Estate Vs. The workmen* (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."

28. Similarly, Their Lordship of Hon'ble Delhi High Court in another authority reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709**, Hon'ble Delhi High Court dealt with the question of reinstatement and back wages has observed that the decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages.

29. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

30. Moreso, their Lordships of Hon'ble Supreme Court in another authority reported as *M.L. Binjolkar Vs. State of Madhya Pradesh*, 2005 VI (S.C.) 413, Hon'ble Supreme Court has observed that though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. *Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattarcharya & Anr.* (2002 (6) SCC 41), *Rajendra Prasad Arya Vs. State of Bihar* (200 (9) SCC 514), *Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh* (2005 (3) SCC 232), *Haryana State Cooperative Land Development Bank Vs. Neelam* (2005 (5) SCC 91), *Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors.* (2005 (5) SCC 100) and *Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr.* (2005 (5) SCC 124), we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view.

31. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey**, (2006) 1 SCC 479, wherein the Hon'ble Supreme Court, observed that the earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."

32. In the instant case, the petitioner was engaged by contractor i.e. respondents no.2 and 3 and thereafter he was deployed with respondent no.1. The petitioner had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respondent no.1, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

33. Recent developments, particularly the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal** (2014) 7 SCC 177 and further reiterated lately in

P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnsta, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294.

34. In the exposition of law enumerated hereinbefore, now, I would like to award the lump sum compensation to the petitioner in the attendant facts and circumstances of the case. With all humility, there is no enunciation on the point of law shown to me by Ld. AR for the petitioner. However, each case has its own merits. The decision of the Court must depend upon the attendant facts, circumstances and evidence on record.

35. For the foregoing reasons, keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for a lump sum compensation amount of **₹ 70,000/- (₹ Seventy Thousand) as lump sum compensation** from the respondents no.2 & 3, who are jointly liable to pay the awarded amount to the petitioner. Accordingly, both these issues are decided partly in favour of the petitioner and against respondents No.2 & 3.

ISSUES NO.3 & 4.

36. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

37. In order to prove these issue, no specific evidence has been led from the side of the respondent No.1, which could go to show as to how the present petition has not been maintainable and the same is barred by limitation. Moreover, the present petition has been filed by the petitioner pursuant to reference received from the appropriate government for legal adjudication. I find no illegality in the present petition, which is perfectly maintainable in the present form. Accordingly, this issue is answered in favour of the petitioner and against the respondents.

RELIEF

38. As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner succeeds and is hereby allowed and the petitioner is awarded lump sum compensation of **₹ 70,000/- (Rs. Seventy Thousand)**, to the workman, to be paid by the respondents no. 2 & 3 i.e Jaswant singh VPO Ramshehar, Tehsil Nalagarh, District Solan, HP and Amarjit Singh VPO Ramshehar, Tehsil Nalagarh, District Solan, HP jointly and severally by both the parties, within a period of two months from the date of announcement of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondents No. 2 & 3 to the workman. This apart, it is expressly made clear that besides lump sum compensation, the petitioner is also entitled for all his legal dues i.e gratuity, leave encashment, EPF, ESI etc., admissible, if any, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 2nd day of Jan., 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 69 of 2020

Instituted on : 23-06-2020

Decided on : 02-01-2023

Ram Chand s/o Shri Bhag Singh, r/o Village Aletta, P.O. Sai, Tehsil Baddi, District Solan,
H.P. *Petitioner.*

VERSUS

1. The Executive Engineer, Irrigation & Public Health Division, Nalagarh, District Solan, H.P.
2. Jaswant Singh VPO Ramshehar, Tehsil Nalagarh, District Solan, H.P.
3. Amarjit Singh VPO Ramshehar, Tehsil Nalagarh, District Solan, H.P. *Respondents.*

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For petitioner : Shri J.C. Bhardwaj, AR

For respondent No.1 : Ms. Reena Chauhan, Dy. DA

For respondents No. 2&3 : Ex-parte

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 15.06.2020, under section 10 of the Industrial Disputes Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication:

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2. The case of the petitioner as it emerges from the statement of claim is that he was engaged as Pump Operator at LWSS Kandhol-Tuzarin Panchyat Badhaunighat in the month of April, 2010 but his name was not enrolled with respondent no.1 department and was enrolled with so called contractors i.e. respondents no.1 & 2. The legitimate dues of the petitioner were not paid by the respondents. The name of the petitioner was transferred by the principal employer from his roll to the rolls of name lender contractor without his consent. The petitioner used to work 24 hours a day without any break and in violation of Labour Law Legislations. The name lender contractors

have never obtained any valid licence nor the principal employer (respondent no.1) was ever registered under the Contract Labour (Regulation and Abolition) Act. The petitioner was engaged in permanent nature of work. He had worked continuously for 8 years and completed more than 240 working days in a calendar year. There is violation of sections 25-B, 25-F, 25-G & 25-H of the Act. The work and conduct of the petitioner was satisfactory and as such he was never served with any notice, chargesheet etc. The petitioner has been deprived from his right of livelihood. The services of the petitioner were terminated in an arbitrary manner. The said termination falls under the ambit of section 2(oo) of the Act.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

“Now, it is therefore prayed that your honour may kindly be pleased to award reinstatement to the petitioner/workman in the employment of the respondent No.1 i.e. Executive Engineer, HP Irrigation and Public Health Division, Nalagarh, District Solan, with retrospective effect i.e. from the date of his illegal removal/termination on 04.09.2018 with full back-wages, seniority and other consequential service benefits throughout and with costs.”

4. The lis was resisted and contested by respondent No.1 by filing written reply on inter-alia raising preliminary objections of maintainability, barred by limitation and no cause of action.

5. On merits, it is submitted that the petitioner was engaged by respondent no.2 (contractor) as due to shortage of staff, the respondent department has floated the tenders for the smooth operation and maintenance of Lift Water Supply Scheme Kandhol, Tuzar during the year 2010 and as such the work was awarded to respondent no.2 who has quoted the lowest rate for the work and thereafter the work was awarded to respondent no.3. The whole responsibility for deployment of staff/workers on the work lies with the contractors. It is further submitted that both the contractors *i.e.* respondent no.2 and 3 are registered with the respondent department and on the basis of registration they can participate in tendering process. The respondent department neither engaged the services of the petitioner nor disengaged him from services. It is denied that the respondent department had adopted the formula of hire and fire. It is therefore prayed that the claim filed by the petitioner may kindly be dismissed.

6. It is pertinent to mention here that both the contractors *i.e.* respondent no.1 and 2 were duly served in accordance with law but they have failed to appear before this Court despite having been served, hence, both the respondents were proceeded against ex-parte.

7. While filing rejoinder, the petitioner controverted the averments made thereto in the replies filed by respondents and reaffirmed and reiterated those raised in the claim petition.

8. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 25.02.2022, as under:

1. Whether the termination of the services of the petitioner by the respondents w.e.f. 04.09.2018, without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified, as alleged? . . .*OPP.*
2. If issue no.1 is proved in affirmative, then what relief of service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the petition is not maintainable, as alleged? . . .*OPR.*

4. Whether the petition is barred by limitation as alleged? . . . OPR.

5. Relief

9. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

10. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

11. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No.1	Yes
Issue No.2	Entitled to lump sum compensation.
Issue No.3	No
Issue No.4	No
Relief.	Reference is partly allowed awarding lump sum compensation to the petitioner.

REASONS FOR FINDINGS

ISSUES NO.1 & 2

12. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

13. In order to substantiate its case, the petitioner has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition. He also tendered into evidence copies of log book (PW-1/B).

14. In cross-examination, he denied that he was engaged by the contractor in water supply scheme. He further denied that the wages and other service conditions were looked-after by the contractor. He denied that the log book was given to him by the contractor. He also denied that he was the employee of contractor who used to pay him wages. He denied that it is the responsibility of the contractor to grant him service benefits and not the department.

15. In order to rebut, the respondent No.1 has examined Shri Praveen Kumar, Assistant Engineer of respondent no.1 as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence agreement (R-1), complaint (R-2), award letter dated 03.05.2018 (R-3) and award letter dated 03.02.2016 (R-4).

16. In cross-examination, on behalf of petitioner he admitted that the pump was under the supervision of the department. He denied that the workers are working continuously since 2010 to

2018. He further denied that the contractor was only name lender contractor. He admitted that the water schemes are in working order and supplying the water to the villagers.

17. This is the entire oral as well as documentary evidence adduced from the side of the parties.

18. Shri J.C. Bhardwaj, AR for the petitioner has contended with all vehemence that the petitioner there is a clear cut violation of section 25-F of the Act as the services of the petitioner were terminated by an oral order without complying with the provisions of the Act. The services of the petitioner were engaged by the respondent no.1 but he was shown to be engaged through respondents no.2 and 3, which is nothing but amounting to camouflage. The name of the petitioner was illegally transferred on the rolls of contractors by the department, therefore, the termination of the services of the petitioner amounts to unfair labour practice, hence, he is entitled to be reinstated in service along-with all consequential service benefits including full back-wages. He has also relied upon *Chemical Mazdoor Panchayat Vs. IOC Ltd.*, 2017 LLR 785, *New India Insurance Co. Vs. Rakesh* 2017 LLR 787, *Umrula Gram Panchayat Vs. The Secretary* 2015 LLR 449, *Bhilwada Dugdh Utpadak Vs. Vinod Kumar* 2011 LLR 1079, *Air India Vs. P O CGIT*, 2011 LLR 1080, *Gauri Shankar Vs. State of Rajasthan* 2015 LLR 785 and *K S Ravinderan Vs. New India* 2015 LLR 790.

19. *Per contra*, Shri Dy. DA for the respondent no.1 urged that services of the petitioner were engaged by the respondents no.2 and 3 as the respondent department has floated the tenders for the smooth operation and maintenance of Lift Water Supply Scheme and the work was awarded to respondent no.2, who has quoted the lowest rate for the work and thereafter the work was awarded to respondent no.3. The whole responsibility for deployment of staff/workers on the work lies with the contractors. The respondent department has nothing to do with the engagement and termination of the petitioner. The petitioner was the workman of the contractors. He prayed for the dismissal of the claim petition.

20. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondents and have also scrutinized the entire case record with minute care, caution and circumspection.

21. Thus, from a careful examination of the entire case record, it is manifestly clear on record that the only grouse raised from the side of the petitioner is that his services were engaged during the month of April 2010 as Pump Operator with the principal employer i.e respondent department and he had remained in service till his services were illegally terminated by the respondent no.1 department. It is further pleaded case of the petitioner that he was not enrolled/entered on the rolls of the respondent no.1, but his name was shown to be engaged through the name lender contractor. On the other hand, the case set up by the respondent no.1 department is that the services of the petitioner have never been engaged by the department. The services of the petitioner were engaged by the contractors i.e the respondents no. 2 & 3, as due to shortage of staff, the respondent department had outsourced the work of water supply scheme for proper running after awarding the work and by completing tender process to private contractors. Since, the petitioner was not at all the employee of respondent department, hence, it had no concern with the engagement or disengagement of the services of the petitioner. It is settled preposition of law that the initial burden lies on the party who alleges the same, therefore, it is the bounden duty of the petitioner to prove the fact that he was initially engaged by the principal employer (respondent department) during the month of April 2010. In order to discharge the onus, the petitioner had mainly relied upon the documentary proof i.e log book (PW-1/B) allegedly issued in the name of the petitioner. The perusal of log book (PW-1/B), goes to demonstrate that neither the same has been verified nor issued by the respondent department. The petitioner has also miserably failed to place on record any of the cogent proof i.e appointment letter, muster roll or any other record, which

could go to establish that the services of the petitioner have been engaged by the department and none other else. It has duly been established on record that the work of water supply scheme was awarded to the private contractors and their names have been duly registered with the department. It is also proved on record from the agreement dated 27.3.2010 (R-1), award letter dated 3.5.2018 (R-3) and award letter dated 3.2.2016 (R-4) that the work of water supply scheme was duly awarded to the respondents no.2 & 3. Thus, it can be safely concluded that the petitioner was deputed with the respondent no.1, and definitely he was engaged and the employee of respondents no. 2 & 3 contractors only. Moreover, the Industrial Court have no jurisdiction to determine the question as to whether the contract labour should be abolished or not, the same being within the exclusive domain of appropriate government.

22. Now, it has to be seen as to whether the services of the petitioner have been terminated illegally without following the mandatory provisions of the Act by respondents No.2 & 3 or not?

23. The next very question, which arises for determination that whether the termination of the services of the petitioner w.e.f. 04.09.2018, is violative of the provisions of the Act. It is the case of the petitioner that he was engaged as Pump Operator during the month of April, 2010 and he had worked as such in that capacity till 4.9.2018 and thereafter his services were terminated without complying with the mandatory provisions of the Act as no notice as required under section has not been issued to him nor he was paid the compensation. From the aforesaid deposition of the petitioner, it is clear that he had completed more than 240 days in each and every calendar year, with the respondents no. 2 & 3 (contractors). Since, the respondents no. 2 & 3 (contractors) have failed to appear before this Tribunal in order to counter the allegations of the petitioner by leading cogent and satisfactory evidence documentary and despite having been served in accordance with law, therefore, this Tribunal has no other alternate but to believe the version of the petitioner. It is also an admitted position on record that the contractor while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondents No. 2 & 3 (contractors), while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the minimum requirement of days as fixed by the Government, hence, he is also entitled for the protection of section 25-F of the Act. There is nothing on record, which could remotely suggest that the respondents no.2 & 3 (contractors) have duly complied with the provisions of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, **which provides as under:**

"25-F: No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;**
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and**
- (c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".**

24. So, in view of this enabling provision of the Act, no workman employed in any industry, who has been in “continuous service” for not less than one year, can be retrenched by the employer unless he has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25-B of the Act, which in its material part, reads as under:

“25B. Definition of continuous service. For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-*
 - (a) for a period of one year; if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-*
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and*
 - (ii) two hundred and forty days, in any other case....”*

25. Since, the petitioner has stated to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month’s mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act, were not followed or complied with by the respondents in the latter and spirit. The respondents no.2 & 3 did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner. The petitioner is the engineer of his own case. He is to prove the case by leading cogent and clinching proof to the same. The petitioner cannot be allowed to take undue advantages out of the weaknesses of the respondents. Simple on this score that the log books, the solitary proof rendered by the petitioner were duly issued and signed by the officers of the Government, SDO or XEN, the engagement of the petitioner at the behest of the contractor shall not be converted into the engagement made by the Government. It is alleged from the side of the petitioner that the name of the petitioner was entered on the roll of name lender contractor who never supervised the work. The work was supervised by J.E, SDO or XEN. The undue benefit by inserting the provisions of contract Labour (Regulation and Abolition) Act, 1970, shall not change the rule of the game, for the reasons that the petitioner was engaged by the contractor. It is the contractor who exercises the over all control and supervision to the services of the petitioner.

26. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

27. Now, the question arises as to what relief, the workman is entitled to? Their Lordships of Hon'ble Supreme Court in an authority reported as **The Workmen of M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813**, has observed that after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in **The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742** within the judicial decision of a Labour Court of Tribunal."

28. Similarly, Their Lordship of Hon'ble Delhi High Court in another authority reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709**, Hon'ble Delhi High Court dealt with the question of reinstatement and back wages has observed that the decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages.

29. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

30. Moreso, their Lordships of Hon'ble Supreme Court in another authority reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413**, Hon'ble Supreme Court has observed that though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. **Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattarcharya & Anr. (2002 (6) SCC 41)**, **Rajendra Prasad Arya Vs. State of Bihar (200 (9) SCC 514)**, **Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh (2005 (3) SCC 232)**, **Haryana State Cooperative Land Development Bank Vs. Neelam (2005 (5) SCC 91)**, **Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors. (2005 (5) SCC 100)** and **Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr. (2005 (5) SCC 124)**, we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view.

31. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479**, wherein the Hon'ble Supreme Court, observed that the earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."

32. In the instant case, the petitioner was engaged by contractor i.e. respondents no.2 and 3 and thereafter he was deployed with respondent no.1. The petitioner had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respondent no.1, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

33. Recent developments, particularly the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as

Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177 and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663** and **Rashtrasant Tukdoji Maharaj Technical Education Samnsta, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294**.

34. In the exposition of law enumerated hereinbefore, now, I would like to award the lump sum compensation to the petitioner in the attendant facts and circumstances of the case. With all humility, there is no enunciation on the point of law shown to me by Ld. AR for the petitioner. However, each case has its own merits. The decision of the Court must depend upon the attendant facts, circumstances and evidence on record.

35. For the foregoing reasons, keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for a lump sum compensation amount of **₹ 70,000/- (Seventy Thousand) as lump sum compensation** from the respondents no.2 & 3, who are jointly liable to pay the awarded amount to the petitioner. Accordingly, both these issues are decided partly in favour of the petitioner and against respondents No.2 & 3.

ISSUES NO.3 & 4

36. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

37. In order to prove these issue, no specific evidence has been led from the side of the respondent No.1, which could go to show as to how the present petition has not been maintainable and the same is barred by limitation. Moreover, the present petition has been filed by the petitioner pursuant to reference received from the appropriate government for legal adjudication. I find no illegality in the present petition, which is perfectly maintainable in the present form. Accordingly, this issue is answered in favour of the petitioner and against the respondents.

RELIEF

38. As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner succeeds and is hereby allowed and the petitioner is awarded lump sum compensation of **₹70,000/- (Rs. Seventy Thousand), to the workman, to be paid by the respondents no. 2 & 3 i.e. Jaswantsingh VPO Ramshehar, Tehsil Nalagarh, District Solan, HP and Amarjit Singh VPO Ramshehar, Tehsil Nalagarh, District Solan, HP jointly and severally by both the parties, within a period of two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondents No. 2 & 3 to the workman. This apart, it is expressly made clear that besides lump sum compensation, the petitioner is also entitled for all his legal dues i.e gratuity, leave encashment, EPF, ESI etc., admissible, if any, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 2nd day of Jan., 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 300 of 2020

Instituted on : 10-11-2020

Decided on : 02-01-2023

Sanjeev Kumar s/o Shri Amar Singh, r/o Village Nand Karlata, P.O. Nand, Tehsil Ramshaher, District Solan, H.P. . *Petitioner.*

VERSUS

1. M/s Shimla Cleanways HQ SahibuNiwas, Sector-2, New Shimla, HP (Contractor).
2. The Executive Engineer M/s Irrigation & Public Health Division, Nalagarh, District Solan, H.P. . *Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri A.K. Sharma, AR

For respondent No.1 : Ex-parte

For respondent No.2 : Ms. Reena Chauhan, Dy. DA

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 29.10.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the services of Sh. Sanjeev Kumar s/o Shri Amar Singh, r/o Village Nand Karlata, P.O. Nand, Tehsil Ramshaher, District Solan, HP by the Managing Director, M/s Shimla Cleanways, H.Q. Sahibu Niwas, Sector-02, New Shimla, H.P. (Contractor) & (ii) The Executive Engineer, I & PH Division Nalagarh, Distt. Solan, H.P. (Principal Employer) w.e.f. 15.07.2019 without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including reinstatement, back-wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that he was engaged as Operator w.e.f. 18.9.2014 and his services have been terminated by the respondents arbitrarily in an unlawful manner w.e.f. 15.7.2019 without complying with the provisions of section 25-F of the Act as neither any notice nor any compensation has been issued/paid to him.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

“In view of above submissions it is prayed before this Hon’ble Court to pass an award in the favour of petitioner and against the respondents. It is further requested to direct

the respondents to reinstate the petitioner back in to the service retrospectively with all service benefits or any other relief as deemed fit in the circumstances of the case.”

4. The lis was resisted and contested by respondent No.1 by filing written reply on inter-alia raising preliminary objections of maintainability, no cause of action and the petitioner was employed by the earlier contractor who had undertaken the work contract on outsource basis and once the contract was over the work contract of worker also ended.

5. On merits, it is submitted that the petitioner was not the employee of respondent no.2 but was working under a company on an outsource basis in whose favour the contract was awarded and once the said contract had come to an end, the work of all the workers employed by the said company on outsource basis, had also come to an end. It is further submitted that the respondent no.1 had been awarded the job contract for providing manpower to various posts in I&PH department and the replying respondent had already deployed the workmen and petitioner who was working on outsource basis under the contract, has no right to claim any reinstatement after the work was over. It is therefore prayed that the claim filed by the petitioner may kindly be dismissed.

6. By filing separate reply, the respondent no.2 has also raised preliminary objections qua maintainability and non-joinder of necessary party.

7. On merits, it is submitted that the contractor had never signed the contract agreement with the respondent department for engagement of the petitioner and the respondent department had never hired the services of the petitioner, hence, he was not the employee of respondent department. It is further submitted that the respondent department has neither engaged/deployed the petitioner and nor terminated his services as the petitioner was engaged by the contractor as per contract agreement signed between respondent department and contractor. It is therefore prayed that the present petition being devoid of any merit, deserves dismissal and may kindly be dismissed in the interests of law and justice.

8. No rejoinder has been filed. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 25.02.2022, as under:

1. Whether the termination of the services of the petitioner by the respondents w.e.f. 15.07.2019, without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified, as alleged? . . .*OPP.*
2. If issue no.1 is proved in affirmative, then what relief of service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the petition is not maintainable, as alleged? . . .*OPR.*
4. Whether the petition is barred by limitation as alleged? . . .*OPR.*
5. Relief

9. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

10. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

11. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No.1	Yes
Issue No.2	Entitled to lump sum compensation.
Issue No.3	No
Issue No.4	No
Relief.	Reference is partly allowed awarding lump sum compensation to the petitioner.

REASONS FOR FINDINGS

ISSUES NO.1& 2

12. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

13. In order to substantiate its case, the petitioner has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition.

14. In cross-examination, he admitted that the work of water lifting scheme was awarded to Ramasra. He further admitted that the wages and other service conditions were looked-after by the contractor. He also admitted that he was not the employee of IPH Department. He admitted himself to be the employee of contractor.

15. The respondent after filing the reply failed to appear before this Court/Tribunal, hence, he was proceeded against ex-parte.

16. In order to rebut, the respondent No.2 has examined Shri Dinesh Kumar, Assistant Engineer of respondent no.1 as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply.

17. In cross-examination, on behalf of petitioner he admitted that the pump was under the supervision of the department. He denied that the workers are working continuously since 2014 to 2019. He further denied that the contractor was only name lender contractor. He admitted that the water schemes are in working order and supplying the water to the villagers.

18. This is the entire oral as well as documentary evidence adduced from the side of the parties.

19. Shri A. K. Sharma, AR for the petitioner has contended with all vehemence that the petitioner there is a clear cut violation of section 25-F of the Act as the services of the peittioner were terminated by an oral order without complying with the provisions of the Act. The services of the petitioner were engaged by the respondent no.1 but he was shown to be engaged through respondents no.1, which is nothing but amouting to camouflag. The name of the petitioner was illegally transferred on the rolls of contractor by the department, therefore, the termianction of the

services of the petitioner amounts to unfair labour practice, hence, he is entitled to be reinstated in service along-with all consequential service benefits including full back-wages.

20. *Per contra*, Shri Dy. DA for the respondent no.2 urged that services of the petitioner were engaged by the respondent no.1 as the respondent department has floated the tenders for the smooth operation and maintenance of Lift Water Supply Scheme and the work was awarded to respondent no.1, who has quoted the lowest rate for the work. The whole responsibility for deployment of staff/workers on the work lies with the contractor. The respondent department has nothing to do with the engagement and termination of the petitioner. The petitioner was the workman of the contractor. She prayed for the dismissal of the claim petition.

21. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondents and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful examination of the entire case record, it is manifestly clear on record that the only grouse raised from the side of the petitioner is that his services were engaged w.e.f. 18.9.2014 as operator and he had remained in service till his services were illegally terminated by the respondents i.e 15.7.2019. On the other hand, the case set up by the respondent no.2 department is that the services of the petitioner have never been engaged by the department. The services of the petitioner were engaged by the contractor i.e the respondent no. 1. Since, the petitioner was not at all the employee of respondent department, hence, it had no concern with the engagement or disengagement of the services of the petitioner. It is settled preposition of law that the initial burden lies on the party who alleges the same, therefore, it is the bounden duty of the petitioner to prove the fact that he was initially engaged by the principal employer (respondent department) w.e.f. 18.9.2014. In order to discharge the onus, the petitioner has failed to lead any documentary evidence on record which could go to demonstrate that his services were engaged by the department. The petitioner has also miserably failed to place on record any of the cogent proof i.e appointment letter, muster roll or any other record, which could go to establish that the services of the petitioner have been engaged by the department and none other else. It has duly been established on record that the work of water supply scheme was awarded to the private contractors and their names have been duly registered with the department. Moreover, the petitioner has himself admitted in his cross-examination as (PW-1) that the work of water lifting scheme was awarded to Ramasra. He further admitted that the wages and other service conditions were looked-after by the contractor. He also admitted that he was not the employee of IPH Department. He admitted himself to be the employee of contractor. Thus, it can be safely concluded that the petitioner was deputed with the respondent no.2, and definitely he was engaged and the employee of respondent no.1 contractor only. Moreover, the Industrial Court have no jurisdiction to determine the question as to whether the contract labour should be abolished or not, the same being within the exclusive domain of appropriate government.

23. Now, it has to be seen as to whether the services of the petitioner have been terminated illegally without following the mandatory provisions of the Act by respondent No.1 or not?

24. The next very question, which arises for determination that whether the termination of the services of the petitioner w.e.f. 15.7.2019, is violative of the provisions of the Act. It is the case of the petitioner that he was engaged as operator w.e.f. 18.9.2014 and he had worked as such in that capacity till 17.7.2019 and thereafter his services were terminated without complying with the mandatory provisions of the Act as no notice as required under section has not been issued to him nor he was paid the compensation. From the aforesaid deposition of the petitioner, it is clear that he had completed more than 240 days in each and every calendar year, with the respondent no.1 (contractor). Since, the respondent no.1 (contractor) has failed to appear before this Tribunal in

order to counter the allegations of the petitioner by leading cogent and satisfactory evidence documentary and despite having been served in accordance with law, therefore, this Tribunal has no other alternate but to believe the version of the petitioner. It is also an admitted position on record that the contractor while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondent No. 1 (contractor), while terminating the services of the petitioner has to fall within the four corners of the definition of “retrenchment” as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the minimum requirement of days as fixed by the Government, hence, he is also entitled for the protection of section 25-F of the Act. There is nothing on record, which could remotely suggest that the respondent no.1 (contractor) has duly complied with the provisions of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, **which provides as under:**

"25-F: No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;**
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and**
- (c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".**

25. So, in view of this enabling provision of the Act, no workman employed in any industry, who has been in “continuous service” for not less than one year, can be retrenched by the employer unless he has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25-B of the Act, which in its material part, reads as under:

“25B. Definition of continuous service. For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-*
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-*

(i) *one hundred and ninety days in the case of a workman employed below ground in a mine; and*

(ii) *two hundred and forty days, in any other case....”*

26. Since, the petitioner has stated to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act, were not followed or complied with by the respondent no.1 in the latter and spirit. The respondent no.1 did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

27. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

28. Now, the question arises as to what relief, the workman is entitled to? Their Lordships of Hon'ble Supreme Court in an authority reported as **The Workmen of M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813**, has observed that after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in **The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742** within the judicial decision of a Labour Court of Tribunal."

29. Similarly, Their Lordship of Hon'ble Delhi High Court in another authority reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709**, **Hon'ble Delhi High Court** dealt with the question of reinstatement and back wages has observed that the decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages.

30. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

31. Moreso, their Lordships of Hon'ble Supreme Court in another authority reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413**, Hon'ble Supreme Court has observed that though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. **Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattacharya & Anr. (2002 (6) SCC 41)**, **Rajendra Prasad Arya Vs. State of Bihar (200 (9) SCC 514)**, **Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh (2005 (3) SCC 232)**, **Haryana State Cooperative Land Development Bank Vs. Neelam (2005 (5) SCC 91)**, **Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors. (2005 (5) SCC 100)** and **Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr. (2005 (5) SCC 124)**, we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view.

32. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479**, wherein the Hon'ble Supreme Court, observed that the earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view.

33. In the instant case, the petitioner was engaged by contractor i.e. respondent no.1 and thereafter he was deployed with respondent no.2. The petitioner had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respondent no.2, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

34. Recent developments, particularly the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663** and **Rashtrasant Tukdoji Maharaj Technical Education Samnatha, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294**.

35. In the exposition of law enumerated hereinbefore, now, I would like to award the lump sum compensation to the petitioner in the attendant facts and circumstances of the case.

36. For the foregoing reasons, keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for a lump sum compensation amount of **₹ 70,000/- (₹ Seventy Thousand) as lump sum compensation** from the respondent no.1,. Accordingly, both these issues are decided partly in favour of the petitioner and against respondent No.1.

ISSUES NO.3 & 4.

37. Both these issues are intermingled and interconnected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

38. In order to prove these issue, no specific evidence has been led from the side of the respondent No.1, which could go to show as to how the present petition has not been maintainable and the same is barred by limitation. Moreover, the present petition has been filed by the petitioner pursuant to reference received from the appropriate government for legal adjudication. I find no illegality in the present petition, which is perfectly maintainable in the present form. Accordingly, this issue is answered in favour of the petitioner and against the respondents.

RELIEF

39. As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner succeeds and is hereby allowed and the petitioner is awarded lump sum compensation of **₹ 70,000/- (Rs. Seventy Thousand), to the workman, to be paid by the respondent no.1 i.e. the Managing Director M/s Shimla Cleanways, HQ SahibuNiwas Sector-2, New Shimla, H.P.**

within a period of two months from the date of announcement of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent No. 1 to the workman. This apart, it is expressly made clear that besides lump sum compensation, the petitioner is also entitled for all his legal dues i.e gratuity, leave encashment, EPF, ESI etc., admissible, if any, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 2nd day of Jan., 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 301 of 2020

Instituted on : 10-11-2020

Decided on : 02-01-2023

Rakesh Kumar s/o Shri Gyan Chand, r/o Village Kharpana, P.O. Nand, Tehsil Ramshaher,
District Solan, H.P. . *Petitioner.*

VERSUS

1. M/s Shimla Cleanways HQ Sahibu Niwas, Sector-2, New Shimla, HP (Contractor).
2. The Executive Engineer M/s Irrigation & Public Health Division, Nalagarh, District Solan, HP. . *Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri A.K. Sharma, AR

For respondent No.1 : Ex-parte

For respondent No.2 : Ms. Reena Chauhan, Dy. DA

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 30.10.2020, under section 10 of the Industrial Disputes Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication:

“Whether termination of the services of Sh. Rakesh Kumar S/o Shri Gyan Chand, r/o Village Kharpana, P.O. Nand, Tehsil Ramshaher, District Solan, HP by the Managing Director, M/s Shimla Cleanways, H.Q. Sahibu Niwas, Sector-02, New Shimla, H.P. (Contractor) & (ii) The Executive Engineer, I & PH Division Nalagarh, Distt. Solan, H.P. (Principal Employer) w.e.f. 17.07.2019 without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including reinstatement, back-wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that he was engaged as Chowkidar w.e.f. 5.4.2018 and his services have been terminated by the respondents arbitrarily in an unlawful manner w.e.f. 17.7.2019 without complying with the provisions of section 25-F of the Act as neither any notice nor any compensation has been issued/paid to him.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

“In view of above submissions it is prayed before this Hon’ble Court to pass an award in the favour of petitioner and against the respondents. It is further requested to direct the respondents to reinstate the petitioner back in to the service retrospectively with all service benefits or any other relief as deemed fit in the circumstances of the case.”

4. The lis was resisted and contested by respondent No.1 by filing written reply on inter-alia raising preliminary objections of maintainability, no cause of action and the petitioner was employed by the earlier contractor who had undertaken the work contract on outsource basis and once the contract was over the work contract of worker also ended.

5. On merits, it is submitted that the petitioner was not the employee of respondent no.2 but was working under a company on an outsource basis in whose favour the contract was awarded and once the said contract had come to an end, the work of all the workers employed by the said company on outsource basis, had also come to an end. It is further submitted that the respondent no.1 had been awarded the job contract for providing manpower to various posts in I&PH department and the replying respondent had already deployed the workmen and petitioner who was working on outsource basis under the contract, has no right to claim any reinstatement after the work was over. It is therefore prayed that the claim filed by the petitioner may kindly be dismissed.

6. By filing separate reply, the respondent no.2 has also raised preliminary objections qua maintainability and non-joinder of necessary party.

7. On merits, it is submitted that the contractor had never signed the contract agreement with the respondent department for engagement of the petitioner and the respondent department had never hired the services of the petitioner, hence, he was not the employee of respondent department. It is therefore prayed that the present petition being devoid of any merit, deserves dismissal and may kindly be dismissed in the interests of law and justice.

8. No rejoinder has been filed. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 25.02.2022, as under:

1. Whether the termination of the services of the petitioner by the respondents w.e.f. 17.07.2019, without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified, as alleged? . . .OPP.

2. If issue no.1 is proved in affirmative, then what relief of service benefits the petitioner is entitled to? . .*OPP*.

3. Whether the petition is not maintainable, as alleged? . .*OPR*.

4. Whether the petition is barred by limitation as alleged? . .*OPR*.

5. Relief

9. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

10. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

11. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No.1	Yes
Issue No.2	Entitled to lump sum compensation
Issue No.3	No
Issue No.4	No
Relief	Reference is partly allowed awarding lump sum compensation to the petitioner.

REASONS FOR FINDINGS

ISSUES NO.1& 2

12. Both these issues are intermingled and interconnected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

13. In order to substantiate its case, the petitioner has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition.

14. In cross-examination, he admitted that the work of water lifting scheme was awarded to Ramasra. He further admitted that the wages and other service conditions were looked-after by the contractor. He also admitted that he was not the employee of IPH Department. He admitted himself to be the employee of contractor.

15. The respondent after filing the reply failed to appear before this Court/Tribunal, hence, he was proceeded against ex-parte.

16. In order to rebut, the respondent No.2 has examined Shri Dinesh Kumar, Assistant Engineer of respondent no.1 as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply.

17. In cross-examination, on behalf of petitioner he admitted that the pump was under the supervision of the department. He denied that the workers are working continuously since 2014 to 2019. He further denied that the contractor was only name lender contractor. He admitted that the water schemes are in working order and supplying the water to the villagers.

18. This is the entire oral as well as documentary evidence adduced from the side of the parties.

19. Shri A.K. Sharma, AR for the petitioner has contended with all vehemence that the petitioner there is a clear cut violation of section 25-F of the Act as the services of the peittioner were terminated by an oral order without complying with the provisions of the Act. The services of the petitioner were engaged by the respondent no.1 but he was shown to be engaged through respondents no.1, which is nothing but amouting to camouflage. The name of the petitioner was illegally transferred on the rolls of contractor by the department, therefore, the termiantion of the services of the petitioner amounts to unfair labour practice, hence, he is entitled to be reinstated in service along-with all consequential service benefits including full back-wages.

20. *Per contra*, Shri Dy. DA for the respondent no.2 urged that services of the petitioner were engaged by the respondent no.1 as the respondent department has floated the tenders for the smooth operation and maintenance of Lift Water Supply Scheme and the work was awarded to respondent no.1, who has quoted the lowest rate for the work. The whole responsibility for deployment of staff/workers on the work lies with the contractor. The respondent department has nothing to do with the engagement and termination of the petitioner. The petitioner was the workman of the contractor. She prayed for the dismissal of the claim petition.

21. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondents and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful examination of the entire case record, it is manifestly clear on record that the only grouse raised from the side of the petitioner is that his services were engaged w.e.f. 5.4.2018 as Chowkidar and he had remained in service till his services were illegally terminated by the respondents i.e 17.7.2019. On the other hand, the case set up by the respondent no.2 department is that the services of the petitioner have never been engaged by the department. The services of the petitioner were enaged by the contractor i.e the respondent no. 1. Since, the petitioner was not at all the employee of respondent department, hence, it had no concern with the engagement or disengagement of the services of the petitioner. It is settled preposition of law that the initial burden lies on the party who alleges the same, therefore, it is the bounden duty of the petitioner to prove the fact that he was initially engaged by the principal employer (respondent department) w.e.f. 5.4.2018. In order to discharge the onus, the petitioner has failed to lead any documentary evidence on record which could go to demonstrate that his services were engaged by the department. The petitioner has also miserably failed to place on record any of the cogent proof i.e appointment letter, mustr roll or any other record, which could go to establish that the services of the petitioner have been engaged by the department and none other else. It has duly been established on record that the work of water supply scheme was awarded to the private contractors and their names have been duly registered with the department. Moreover, the petitioner has himself admitted in his cross-examiantion as (PW-1) that that the work of water lifting scheme was awarded to Ramasra. He further admitted that the wages and other service conditions were looked-after by the contractor. He also admitted that he was not the employee of IPH Department. He admitted himself to be the employee of contractor. Thus, it can be safely concluded that the petitioner was deputed with the respondent no.2, and definately he was engaged and the employee of respondent no.1 contractor only. Moreover, the Industrial Court have no jurisdiction to

determine the question as to whether the contract labour should be abolished or not, the same being within the exclusive domain of appropriate government.

23. Now, it has to be seen as to whether the services of the petitioner have been terminated illegally without following the mandatory provisions of the Act by respondents No.2 & 3 or not?

24. The next very question, which arises for determination that whether the termination of the services of the petitioner w.e.f. 17.7.2019, is violative of the provisions of the Act. It is the case of the petitioner that he was engaged as chowkidar w.e.f. 5.4.2018 and he had worked as such in that capacity till 17.7.2019 and thereafter his services were terminated without complying with the mandatory provisions of the Act as no notice as required under section has not been issued to him nor he was paid the compensation. From the aforesaid deposition of the petitioner, it is clear that he had completed more than 240 days in each and every calendar year, with the respondent no.1 (contractor). Since, the respondent no.1 (contractor) has failed to appear before this Tribunal in order to counter the allegations of the petitioner by leading cogent and satisfactory evidence documentary and despite having been served in accordance with law, therefore, this Tribunal has no other alternate but to believe the version of the petitioner. It is also an admitted position on record that the contractor while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondent No. 1 (contractor), while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the minimum requirement of days as fixed by the Government, hence, he is also entitled for the protection of section 25-F of the Act. There is nothing on record, which could remotely suggest that the respondent no.1 (contractor) has duly complied with the provisions of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, **which provides as under:**

"25-F: No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;**
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and**
- (c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".**

25. So, in view of this enabling provision of the Act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part, reads as under:

"25B. Definition of continuous service. For the purposes of this Chapter,—

- (1) *a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) *where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—*
 - (a) *for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—*
 - (i) *one hundred and ninety days in the case of a workman employed below ground in a mine; and*
 - (ii) *two hundred and forty days, in any other case....”*

26. Since, the petitioner has stated to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act, were not followed or complied with by the respondent no.1 in the latter and spirit. The respondent no.1 did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

27. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

28. Now, the question arises as to what relief, the workman is entitled to? Their Lordships of Hon'ble Supreme Court in an authority reported as **The Workmen of M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813**, has observed that after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in **The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742** within the judicial decision of a Labour Court of Tribunal."

29. Similarly, Their Lordship of Hon'ble Delhi High Court in another authority reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709**, Hon'ble Delhi High Court dealt with the question of reinstatement and back wages has observed that the decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages.

30. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

31. Moreso, their Lordships of Hon'ble Supreme Court in another authority reported as **M.L. Binjolkar Vs. State of Madhya Pradesh**, 2005 VI (S.C.) 413, Hon'ble Supreme Court has observed that though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. **Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattarcharya & Anr.** (2002 (6) SCC 41), **Rajendra Prasad Arya Vs. State of Bihar** (200 (9) SCC 514), **Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh** (2005 (3) SCC 232), **Haryana State Cooperative Land Development Bank Vs. Neelam** (2005 (5) SCC 91), **Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors.** (2005 (5) SCC 100) and **Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr.** (2005 (5) SCC 124), we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view.

32. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey**, (2006) 1 SCC 479, wherein the Hon'ble Supreme Court, observed that the earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."

33. In the instant case, the petitioner was engaged by contractor i.e. respondent no.1 and thereafter he was deployed with respondent no.2. The petitioner had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respondent no.2, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

34. Recent developments, particularly the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal** (2014) 7 SCC 177 and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd.** (2018) 12 SCC 663 and **Rashtrasant Tukdoji Maharaj Technical Education Samnatha, Nagpur Vs. Prashant Manikrao Kubitkar** (2018) 12 SCC 294.

35. In the exposition of law enumerated hereinbefore, now, I would like to award the lump sum compensation to the petitioner in the attendant facts and circumstances of the case. 36. For the foregoing reasons, keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for a lump sum compensation amount of ₹ 70,000/- (₹Seventy Thousand) as lump sum compensation from the respondent no.1. Accordingly, both these issues are decided partly in favour of the petitioner and against respondent No.1.

ISSUES NO.3 & 4.

37. Both these issues are intermingled and interconnected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

38. In order to prove these issue, no specific evidence has been led from the side of the respondent No.1, which could go to show as to how the present petition has not been maintainable

and the same is barred by limitation. Moreover, the present petition has been filed by the peittioner pursuant to reference received from the appropriate government for legal adjudication. I find no illegality in the present peittion, which is perfectly maintainable in the present form. Accordingly, this issue is answered in favour of the peittioner and against the respondents.

RELIEF

39. As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner succeeds and is hereby allowed and the petitioner is awarded lump sum compensation of ₹ 70,000/- (Rs. Seventy Thousand), to the workman, to be paid by the respondent no.1 i.e. the **Managing Director M/s Shimla Cleanways, HQ Sahibu, Niwas Sector-2, New Shimla, HP**, within a period of two months from the date of announcement of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent No. 1 to the workman. This apart, it is expressly made clear that besides lump sum compensation, the petitioner is also entitled for all his legal dues i.e gratuity, leave encashment, EPF, ESI etc., admissible, if any, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 2nd day of Jan., 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, SHIMLA

Reference Number : 302 of 2020

Instituted on : 10-11-2020

Decided on : 02-01-2023

Arjun s/o Shri Jeet Ram, r/o Village Kharpana Plasadi, P.O. Nand, Tehsil Ramshaher,
District Solan, H.P. . .Petitioner.

VERSUS

1. M/s Shimla Cleanways HQ Sahibu Niwas, Sector-2, New Shimla, HP (Contractor).
2. The Executive Engineer M/s Irrigation & Public Health Division, Nalagarh, District Solan, H.P. . .Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri A.K, Sharma, AR

For respondent No.1 : Ex-parte

For respondent No.2 : Ms. Reena Chauhan, Dy. DA.

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 30.10.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the services of Sh. Arjun s/o Shri Jeet Ram, r/o Village Kharpana Plasadi, P.O. Nand, Tehsil Ramshaher, District Solan, HP by the Managing Director, M/s Shimla Cleanways, H.Q. Sahibu Niwas, Sector-02, New Shimla, H.P. (Contractor) & (ii) The Executive Engineer, I & PH Division Nalagarh, Distt. Solan, H.P. (Principal Employer) w.e.f. 17.07.2019 without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including reinstatement, back-wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that he was engaged as Operator w.e.f. 15.07.2016 and his services have been terminated by the respondents arbitrarily in an unlawful manner w.e.f. 17.7.2019 without complying with the provisions of section 25-F of the Act as neither any notice nor any compensation has been issued/paid to him.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

“In view of above submissions it is prayed before this Hon’ble Court to pass an award in the favour of petitioner and against the respondents. It is further requested to direct the respondents to reinstate the petitioner back in to the service retrospectively with all service benefits or any other relief as deemed fit in the circumstances of the case.”

4. The lis was resisted and contested by respondent No.1 by filing written reply on inter-alia raising preliminary objections of maintainability, no cause of action and the petitioner was employed by the earlier contractor who had undertaken the work contract on outsource basis and once the contract was over the work contract of worker also ended.

5. On merits, it is submitted that the petitioner was not the employee of respondent no.2 but was working under a company on an outsource basis in whose favour the contract was awarded and once the said contract had come to an end, the work of all the workers employed by the said company on outsource basis, had also come to an end. It is further submitted that the respondent no.1 had been awarded the job contract for providing manpower to various posts in I&PH department and the replying respondent had already deployed the workmen and petitioner who was working on outsource basis under the contract, has no right to claim any reinstatement after the work was over. It is therefore prayed that the claim filed by the petitioner may kindly be dismissed.

6. By filing separate reply, the respondent no.2 has also raised preliminary objections qua maintainability and non-joinder of necessary party.

7. On merits, it is submitted that the contractor had never signed the contract agreement with the respondent department for engagement of the petitioner and the respondent department

had never hired the services of the petitioner, hence, he was not the employee of respondent department. It is further submitted that the respondent department has neither engaged/deployed the petitioner and nor terminated his services as the petitioner was engaged by the contractor as per contract agreement signed between respondent department and contractor. It is therefore prayed that the present petition being devoid of any merit, deserves dismissal and may kindly be dismissed in the interests of law and justice.

8. No rejoinder has been filed. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 25.02.2022, as under:

1. Whether the termination of the services of the petitioner by the respondents w.e.f. 17.07.2019, without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified, as alleged? . . .*OPP*.
2. If issue no.1 is proved in affirmative, then what relief of service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the petition is not maintainable, as alleged? . . .*OPR*.
4. Whether the petition is barred by limitation as alleged? . . .*OPR*.
5. Relief

9. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

10. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

11. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No.1	Yes
Issue No.2	Entitled to lump sum compensation.
Issue No.3	No
Issue No.4	No
Relief.	Reference is partly allowed awarding lump sum compensation to the petitioner.

REASONS FOR FINDINGS

ISSUES NO.1& 2

12. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

13. In order to substantiate its case, the petitioner has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition.

14. In cross-examination, he admitted that the work of water lifting scheme was awarded to Ramasra. He further admitted that the wages and other service conditions were looked-after by the contractor. He also admitted that he was not the employee of IPH Department. He admitted himself to be the employee of contractor.

15. The respondent after filing the reply failed to appear before this Court/Tribunal, hence, he was proceeded against ex-parte.

16. In order to rebut, the respondent No.2 has examined Shri Dinesh Kumar, Assistant Engineer of respondent no.1 as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply.

17. In cross-examination, on behalf of petitioner he admitted that the pump was under the supervision of the department. He denied that the workers are working continuously since 2016 to 2019. He further denied that the contractor was only name lender contractor. He admitted that the water schemes are in working order and supplying the water to the villagers.

18. This is the entire oral as well as documentary evidence adduced from the side of the parties.

19. Shri A. K. Sharma, AR for the petitioner has contended with all vehemence that the petitioner there is a clear cut violation of section 25-F of the Act as the services of the petitioner were terminated by an oral order without complying with the provisions of the Act. The services of the petitioner were engaged by the respondent no.1 but he was shown to be engaged through respondents no.1, which is nothing but amounting to camouflage. The name of the petitioner was illegally transferred on the rolls of contractor by the department, therefore, the termination of the services of the petitioner amounts to unfair labour practice, hence, he is entitled to be reinstated in service along-with all consequential service benefits including full back-wages.

20. *Per contra*, Shri Dy. DA for the respondent no.2 urged that services of the petitioner were engaged by the respondent no.1 as the respondent department has floated the tenders for the smooth operation and maintenance of Lift Water Supply Scheme and the work was awarded to respondent no.1, who has quoted the lowest rate for the work. The whole responsibility for deployment of staff/workers on the work lies with the contractor. The respondent department has nothing to do with the engagement and termination of the petitioner. The petitioner was the workman of the contractor. She prayed for the dismissal of the claim petition.

21. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondents and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, from a careful examination of the entire case record, it is manifestly clear on record that the only grouse raised from the side of the petitioner is that his services were engaged w.e.f. 15.7.2016 as operator and he had remained in service till his services were illegally terminated by the respondents i.e 17.7.2019. On the other hand, the case set up by the respondent no.2 department is that the services of the petitioner have never been engaged by the department. The services of the petitioner were engaged by the contractor i.e the respondent no. 1. Since, the petitioner was not at all the employee of respondent department, hence, it had no concern with the engagement or disengagement of the services of the petitioner. It is settled preposition of law that

the initial burden lies on the party who alleges the same, therefore, it is the bounden duty of the petitioner to prove the fact that he was initially engaged by the principal employer (respondent department) w.e.f. 15.07.2016. In order to discharge the onus, the petitioner has failed to lead any documentary evidence on record which could go to demonstrate that his services were engaged by the department. The petitioner has also miserably failed to place on record any of the cogent proof i.e appointment letter, muster roll or any other record, which could go to establish that the services of the petitioner have been engaged by the department and none other else. It has duly been established on record that the work of water supply scheme was awarded to the private contractors and their names have been duly registered with the department. Moreover, the petitioner has himself admitted in his cross-examination as (PW-1) that that the work of water lifting scheme was awarded to Ramasra. He further admitted that the wages and other service conditions were looked-after by the contractor. He also admitted that he was not the employee of IPH Department. He admitted himself to be the employee of contractor. Thus, it can be safely concluded that the petitioner was deputed with the respondent no.2, and definitely he was engaged and the employee of respondent no.1 contractor only. Moreover, the Industrial Court have no jurisdiction to determine the question as to whether the contract labour should be abolished or not, the same being within the exclusive domain of appropriate government.

23. Now, it has to be seen as to whether the services of the petitioner have been terminated illegally without following the mandatory provisions of the Act by respondent No.1 or not?

24. The next very question, which arises for determination that whether the termination of the services of the petitioner w.e.f. 17.7.2019, is violative of the provisions of the Act. It is the case of the petitioner that he was engaged as operator w.e.f. 15.7.2016 and he had worked as such in that capacity till 17.7.2019 and thereafter his services were terminated without complying with the mandatory provisions of the Act as no notice as required under section has not been issued to him nor he was paid the compensation. From the aforesaid deposition of the petitioner, it is clear that he had completed more than 240 days in each and every calendar year, with the respondent no.1 (contractor). Since, the respondent no.1 (contractor) has failed to appear before this Tribunal in order to counter the allegations of the petitioner by leading cogent and satisfactory evidence documentary and despite having been served in accordance with law, therefore, this Tribunal has no other alternate but to believe the version of the petitioner. It is also an admitted position on record that the contractor while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondent No. 1 (contractor), while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the minimum requirement of days as fixed by the Government, hence, he is also entitled for the protection of section 25-F of the Act. There is nothing on record, which could remotely suggest that the respondent no.1 (contractor) has duly complied with the provisions of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, **which provides as under:**

"25-F: No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;**
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and**

- (c) **notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".**

25. So, in view of this enabling provision of the Act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part, reads as under:

"25B. Definition of continuous service. For the purposes of this Chapter,-

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—*
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-*
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and*
 - (ii) two hundred and forty days, in any other case...."*

26. Since, the petitioner has stated to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act, were not followed or complied with by the respondent no.1 in the latter and spirit. The respondent no.1 did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

27. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

28. Now, the question arises as to what relief, the workman is entitled to? Their Lordships of Hon'ble Supreme Court in an authority reported as **The Workmen of M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813**, has observed that after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in **The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742** within the judicial decision of a Labour Court of Tribunal."

29. Similarly, Their Lordship of Hon'ble Delhi High Court in another authority reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709**, Hon'ble Delhi High Court dealt with the question of reinstatement and back wages has observed that the decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages.

30. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

31. Moreso, their Lordships of Hon'ble Supreme Court in another authority reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413**, Hon'ble Supreme Court has observed that though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. **Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattarcharya & Anr. (2002 (6) SCC 41)**, **Rajendra Prasad Arya Vs. State of Bihar (200 (9) SCC 514)**, **Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh (2005 (3) SCC 232)**, **Haryana State Cooperative Land Development Bank Vs. Neelam (2005 (5) SCC 91)**, **Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors. (2005 (5) SCC 100)** and **Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr. (2005 (5) SCC 124)**, we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view.

32. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479**, wherein the Hon'ble Supreme Court, observed that the earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view.

33. In the instant case, the petitioner was engaged by contractor i.e respondent no.1 and thereafter he was deployed with respondent no.2. The petitioner had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respondent no.2, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

34. Recent developments, particularly the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruvulluvar Transport Corporation Ltd. (2018) 12 SCC 663** and **Rashtrasant Tukdoji Maharaj Technical Education Samnatha, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294**.

35. In the exposition of law enumerated hereinbefore, now, I would like to award the lump sum compensation to the petitioner in the attendant facts and circumstances of the case.

36. For the foregoing reasons, keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for a lump sum compensation amount of ₹ 70,000/- (**₹ Seventy Thousand**) as **lump sum compensation** from the respondent no.1,. Accordingly, both these issues are decided partly in favour of the petitioner and against respondent No.1.

ISSUES NO.3 & 4.

37. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

38. In order to prove these issue, no specific evidence has been led from the side of the respondent No.1, which could go to show as to how the present petition has not been maintainable and the same is barred by limitation. Moreover, the present petition has been filed by the petitioner pursuant to reference received from the appropriate government for legal adjudication. I find no illegality in the present petition, which is perfectly maintainable in the present form. Accordingly, this issue is answered in favour of the petitioner and against the respondents.

RELIEF

39. As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner succeeds and is hereby allowed and the petitioner is awarded lump sum compensation of ₹70,000/- (Rs. Seventy Thousand), to the workman, to be paid by the respondent no.1 i.e. **the Managing Director M/s Shimla Cleanways, HQ Sahibu Niwas Sector-2, New Shimla, HP**, within a period of two months from the date of announcement of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent No. 1 to the workman. This apart, it is expressly made clear that besides lump sum compensation, the petitioner is also entitled for all his legal dues i.e gratuity, leave encashment, EPF, ESI etc., admissible, if any, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 2nd day of Jan., 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Application Number : 327 of 2022

Instituted on : 16-12-2022

Decided on : 02-01-2023

Sharda Devi w/o Shri Chandiya, r/o Village Soldha Bagh Phaglatan, Bilaspur Sadar, District Bilaspur, HP also r/o d/o Shri Tara Chand Village Kache, P.O. Solding, Tehsil Nichar, District Kinnaur, H.P. . .*Applicant.*

VERSUS

1. C.O 68 BRO (Deepak Project, Averi Patti, District Kinnaur, H.P.
2. C.O 108 BRO (Deepak Project) Maling, District Kinnaur, H.P.
3. Chief Engineer, BRO, Deepak Project, HQ Mintow Court Below Advance Studies Parking Shimla, H.P. . .*Respondents.*

Claim petition on behalf of the claimant/petitioner.

For the Applicant : Shri Ravi Shankar Sood, Advocate

For the Respondent : None

ORDER

This order of mine shall dispose off an application/claim petition filed on behalf of the applicant praying therein that the impugned termination, if any, of the petitioner may kindly be quashed and set aside and her services may kindly be ordered to be reinstated and the petitioner may kindly be allowed all consequential benefits, back-wages during the period since illegal retrenchment till her reinstatement.

2. At this stage, it has been stated, at bar, by Shri Ravi Shankar Sood, Advocate for the applicant/petitioner that he does not want to press the claim petition on behalf of the petitioner. To this effect, his statement recorded separately and placed on record.

3. Therefore, keeping in view the aforesaid statement of Ld. Counsel for the applicant/petitioner, the present application which has been filed by her directly before this Tribunal is hereby ordered to be dismissed as having been withdrawn. However, liberty is granted to the petitioner to file fresh claim in accordance with law before competent authority.

4. Let a copy of this order be also communicated to the appropriate government for its due publication in the official gazette forthwith. File after completion be consigned to records. Ordered accordingly.

Announced in the open Court today this 2nd day of Jan., 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 170 of 2018

Instituted on : 05-10-2018

Decided on : 02-01-2023

Monika w/o Shri Pardeep Kumar, r/o Village Behran, P.O. & Tehsil Jhanduta, District
Bilaspur, H.P. . .Petitioner.

VERSUS

SMC Packaging Pvt. Ltd., 164-165, Haripur Road, Village Damowala, P.O Barotiwala,
District Solan, H.P. . .Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For Petitioner : Shri Subhash Pathaniya, Advocate

For Respondent : Shri Prateek Kumar, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 10.07.2018, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, reads as under:

“Whether termination of the services of Smt. Monika w/o Sh. Pardeep Kumar, R/o Village Behran, P.O. & Tehsil Jhanduta, Distt. Bilaspur, HP by the Factory Manager, M/s SMC Packaging Pvt. Ltd. 164-165, Haripur Road, Village Damowala, Barotiwala, Distt. Solan, H.P. 173205 w.e.f. 22.11.2017 without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, reinstatement, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. Key facts necessary for the disposal of the present claim petition are thus that the petitioner was engaged w.e.f. 01.09.2016, in Design Development Section and was paid Rs. 17,000/- per month as salary. The petitioner had completed more than 240 days in a calendar year in terms of Section 25 (B) of the Act. The petitioner service were terminated on 22.11.2018, without any charge-sheet, without any departmental inquiry, in violation of law, without payment of any compensation or payment in terms of the provisions of the Act. The officials of the respondent, rather, misbehaved with the petitioner, which act on their part was wholly unlawful. The services of the petitioner have been terminated in a most illegal and unlawful manner in violation of the provisions of the Act. The petitioner is unemployed and after her termination, she is un-employed and has no source of income and is totally dependent upon her husband for her subsistence and her services are required to be restored with all consequential benefits i.e. reinstatement, continuity, past service benefits, seniority, back wages, and compensation in the interest of justice.

3. In the footnote of the claim petition, the following prayer clause has been appended:

“It is therefore, most respectfully prayed that the claim petition of the petitioner may kindly be allowed and the respondent be directed to re-engage the services of the petitioner forthwith, with all consequential benefits i.e. continuity, seniority, back wages, in the interest of justice.”

4. The lis was resisted and contested by the respondent management by filing written reply wherein preliminary objection of maintainability, not approached the Court with clean hands and cause of action and were raised.

5. On merits, it is denied that the petitioner was engaged by the respondent in month of September, 2016, in fact the petitioner was engaged by the respondent company w.e.f. January, 2017 in supervisory capacity and she worked as such till 22.11.2017 and thereafter she had abandoned her job. The petitioner was only getting Rs. 9,850/- per month as salary for the work which she was performing. It is further submitted that the petitioner during her service period approached the respondent and requested to issue a certificate showing her salary as Rs. 17,000/- per month in place of Rs. 9,850/- per month enabling her to take a car loan from the Bank and as such in a good faith the respondent issued the certificate to the petitioner. It is denied that the service of the petitioner were terminated w.e.f. 22.11.2018 in fact she had abandoned her job w.e.f. 22.11.2017. Despite having been sent messages through officials, the petitioner did not turn up to join the services, hence, all the legal dues were paid to the petitioner in accordance with law. The respondent never misbehaved with the petitioner. The petitioner has leveled such serious allegations upon the replying respondent with ulterior motive to grab money from the respondent which is not permissible under law. It is therefore prayed that the present reference petition may kindly be dismissed with heavy costs being unjust and beyond the precincts of the industrial law applicable in the interest of justice and fair play.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide Court order dated 25.06.2019, as under:

1. Whether the termination of the petitioner w.e.f 22.11.2017 is violative of the provisions of sections 25-F, 25-N and 25-O of the Industrial Disputes Act, 1947 as alleged? If so, to what relief the petitioner is entitled to? . . .*OPP.*
2. Whether the petitioner does not fall under the definition of a “workman” as defined under the Industrial Disputes Act, as alleged? If so, its effect thereto? . . .*OPR.*
3. Whether the claim is not maintainable as the petitioner has not approached this Court with clean hands and suppressed material facts, as alleged? If so, its effect thereto? . . .*OPR.*
4. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No.1	Yes
Issue No.2	No
Issue No.3	No
Relief.	Reference is partly allowed in affirmative as per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1& 2

11. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. In order to substantiate its case, the petitioner has appeared in the witness box as (PW-1) and tendered into evidence her sworn in affidavit (PW-1/A), wherein she has reiterated almost all the averments as made in the claim petition. She also tendered into evidence salary certificate (PW-1/B), prescription slip (PW-1/C) and photograph Mark-A.

13. In cross-examination, she denied that she had abandoned the job since 22.11.2017. She further denied that despite message received from the respondent, she failed to join the services. She also denied that she is not a workman and discharging supervisory duty with the company. She denied that salary certificate (PW-1/B) has been issued only for the purpose of car loan.

14. In order to rebut, the respondent has examined Shri Manish Garg, Director of the respondent company as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence copy of resolution (RW-1/B), abstract of attendance register (RW-1/C), payment of wages register (RW-1/D), calculation sheet (RW-1/E) and cheques Mark X.

15. In cross-examination, he denied that the petitioner was engaged on 01.09.2016 instead of 1.1.2017. He admitted that as per salary certificate (PX), the petitioner was drawing salary of Rs. 17,000/- per month in the financial year 2016-17. He denied that the petitioner was engaged as a worker and not supervisor. He admitted that retrenchment compensation etc. were paid to her as workman. He admitted that the petitioner was terminated without any enquiry or notice. He denied that the petitioner was ousted from the factory after pushing her back.

16. This is the entire oral as well as documentary evidence adduced from the side of the parties.

17. Shri Subhash Pathania, Ld. Counsel for the petitioner has contended with all vehemence that there is a clear cut violation of section 25-F of the Act as the services of the petitioner were terminated by an oral order without complying with the provisions of the Act. The services of the petitioner were engaged by the respondent company in the capacity of workman as she used to work manually. He further contended that the services of the petitioner were terminated by the respondent company and she never abandoned her job. It is therefore prayed that the services of the petitioner may be reinstated along-with all consequential service benefits including full back-wages.

18. *Per contra*, Shri Prateek Kumar, Ld. Counsel for the respondent has urged that the petitioner was engaged as supervisor, hence, she does not fall within the purview of “workman”. He further contended that the services of the petitioner were never terminated by the respondent company rather she herself had abandoned her job and despite sending messages, she failed to join her duties. He prayed for the dismissal of the claim petition.

19. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner, as well Learned Counsel for the respondents and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Thus, from a careful examination of the entire case record, the respondent has tried to establish on record that the petitioner was performing supervisory duties and as such does not fall within the purview of “workman” as contemplated under section 2(s) of the Act. As per the respondent the petitioner was appointed as supervisor in order to supervise the work of workers. Thus, per the respondent the present reference is not maintainable as the petitioner does not fall within the definition of “workman”. As per the petitioner she was a workman as she never performed any work of supervisory or managerial nature.

21. Before advertng any further it would be apposite to venture in to the legal aspect of the matter, as to whether the petitioner would fall within the terms of section 2(s) of the Act. The Section reads as under:

“Workman” means any person (including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, function mainly of a managerial nature.]

22. The definition itself stipulates as to who a workman would be. However, clause-1 to IV are the exceptions which have been carved out to say that the following would not fall within the category of a “workman” (in our case clause-III) and IV are relevant to be noticed. The bare reading of the section shows that a person who is employed in a managerial or administrative capacity would not fall within the term of workman and the person who is employed in a supervisory capacity and draws wages exceeding ₹ 10,000/- per mensem and discharge function mainly of a managerial nature would also not come within the purview of the term “workman”.

23. Viewed in this context a bare reading of the salary certificate (PX) issued to the petitioner Ex. PW-1/C shows that she was working as design development. The work or the job

profile is not reflected in (PX). No doubt the respondent has examined one Shri Manish Garg as RW-1, who in his affidavit has highlighted that he was never employed as workman as she was engaged in the capacity of supervisor to supervise the work of other workers who were working under her, hence, she does not fall within the ambit of workman as provided under section 2(s) of the Act. But in order to prove the aforesaid plea, no specific evidence has been led by the respondent company in order to determine the nature of work being performed by the petitioner.

24. As far back in the year 2006, the Hon'ble Supreme Court in Anand Regional Coop. Oil Seeds Growers Union Ltd. Vs. Shailesh Kumar Harshad Bhai Shah (2006) 6 SCC 548 has held that:

“In determining the nature of work, essence of the matter should be considered and the designation of the employee or the name assigned to him should not be given due importance. The primary duty performed by the person is to be given due importance. For determining the question as to whether a person employed in a industry is a workman or not, not only the nature of the work performed by him but also the terms of the appointment in the job performed are relevant consideration. Being incharge of the section alone and that too shall one relating to Quality control would not answer the text”.

25. Verily, it is now trite that the issue as to whether an employee answers the description of a workman or not has to be determined on the basis of conclusive evidence on record. Reference may be made in this behalf to a judgment of the Hon'ble Supreme Court titled as Sonapat Cooperative Sugar Mills Ltd Vs. Ajit Singh (2005) 3 SCC 232.

26. The perusal of the evidence on record discussed hereinabove conclusively goes to show that the petitioner does fall within the purview of the term “workman” as has been detailed above.

27. Now, adverting to the other aspect of the case. The respondent company has alleged that the services of the petitioner have been engaged in Jan., 2017, whereas the petitioner has stated that she was engaged as Design Development w.e.f. 01.09.2016. In the salary certificate (PX) issued in favour of the petitioner, it is clearly mentioned that she is working as Design Development since September 2016, which fact has not been denied by the respondent company. The issuance of salary certificate has not been denied by the respondent company. The only grouse of the respondent company is that the same has been issued on the request of the petitioner. RW-1 Shri Manish Garg has admitted in his cross-examination that as per salary certificate (PX) dated 18.10.2017, the petitioner was drawing salary of Rs. 17,000/- per month. Therefore, it is more than clear on record that the services of the petitioner were engaged as Design Development by the respondent company in month of September, 2016 and worked as such till 22.11.2017.

28. The next very question, which arises for determination that whether the termination of the services of the petitioner w.e.f. 22.11.2017, is violative of the provisions of the Act. It is the case of the respondent that the services of the petitioner were never terminated by the respondent company rather she herself is responsible for losing her job by abandoning the same. It is an admitted position on record that neither any domestic enquiry had been conducted against the petitioner nor she had been issued any show cause notice. Although, the plea, taken by the respondent, is to this effect that the petitioner had abandoned his job but there is no such material which could go to show that any notice had been issued to her for resuming her duties. *It has been held by the Hon'ble Apex Court in 2001 LLR 54, M/s Scooters India Ltd., Vs. M. Mohammad Yaqub that: “When a workman fails to report for duties, the management cannot presume that the workman has left the job despite being called upon to report failing which his name will be*

removed from the rolls.” It was further held that : “ The principles of natural justice were required to be followed by giving opportunity to the workman.

29. Therefore, keeping in view the facts and circumstances of the present case and having regard to the law laid down by the Hon’ble Apex Court (supra), I have no hesitation in coming to the conclusion that the respondent company has failed to establish on record by leading cogent and satisfactory evidence that the petitioner had abandoned her job. Moreover, the petitioner has placed on record prescription slip (PY) on record which clearly shows that the petitioner was pregnant and she was undergone treatment from ESI Hospital, Baddi.

30. Hence, from the aforesaid factual position, it is more than clear that the petitioner had worked with the respondent company continuously w.e.f. September, 2016 till 22.11.2017 in the capacity of workman and she had not abandoned her job. It is also clear on record that the petitioner had completed 240 working days in preceding twelve calendar months and her services were terminated without complying with the mandatory provisions of the Act as no notice as required under section has not been issued to her nor she was paid the compensation. It is also an admitted position on record that the respondent while terminating the services of the petitioner is to comply with the requirement of the law which has not been done. The very action on the part of the respondent while terminating the services of the petitioner has to fall within the four corners of the definition of “retrenchment” as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the minimum requirement of days as fixed by the Government, hence, she is also entitled for the protection of section 25-F of the Act. There is nothing on record, which could remotely suggest that the respondent has duly complied with the provisions of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"25-F: No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;**
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and**
- (c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".**

31. So, in view of this enabling provision of the Act, no workman employed in any industry, who has been in “continuous service” for not less than one year, can be retrenched by the employer unless he has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25-B of the Act, which in its material part, reads as under:

“25B. Definition of continuous service. For the purposes of this Chapter,—

- (1) *a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) *where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—*
 - (a) *for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-*
 - (i) *one hundred and ninety days in the case of a workman employed below ground in a mine; and*
 - (ii) *two hundred and forty days, in any other case....”*

32. Since, it has been proved on record that the petitioner has completed more than 240 days during the period of twelve calendar months in the preceding year from the date of her retrenchment, her services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act, were not followed or complied with by the respondent in the latter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

33. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified, hence, the petitioner is held to be entitled for reinstatement in service with seniority and continuity. No doubt, the petitioner in her claim petition has averred that she is unemployed after her termination and she has no source of income and is totally dependent upon her husband. However, to prove this plea no evidence has been led by her which could remotely suggest that she remained unemployed after her termination. Moreover, the petitioner has alleged that after his retrenchment, he could not get any employment. However, when regard is given to his statement, while appearing in the witness box, as PW-1, it is abundantly clear that he has been doing agricultural work, at his village, after removal from service and supporting his family. From his such version, it cannot be said that he is not gainfully employed. Moreover, *It has been held by the Hon'ble Supreme Court in 2010 (1) SLJ S.C 70, M/s RituMarbals Vs. Prabhakant Shukla that "full back wages cannot be granted mechanically, upon a order of termination be declared illegal. It is further held that reinstatement must no be accompanied by payment of full back wages even for the period when the workman remained out of service and contributed little or nothing to the Industry".* Therefore, keeping in view the law laid down by the Hon'ble Apex Court, I am of the view that the petitioner is not entitled to back wages.

34. For the foregoing reasons, keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for reinstatement in service with seniority and continuity but without back-wages. The issue is answered accordingly.

ISSUE NO.3

35. In order to prove this issue, no specific evidence has been led from the side of the respondent, which could go to show as to how the present petition has not been maintainable as the

petitioner has not approached this Court with clean hand and suppressed material facts. Moreover, the present petition has been filed by the petitioner pursuant to reference received from the appropriate government for legal adjudication. I find no illegality in the present petition, which is perfectly maintainable in the present form. Accordingly, this issue is answered in favour of the petitioner and against the respondent.

RELIEF

36. As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner succeeds and is hereby partly allowed. Resultantly, directions are hereby passed to the respondent for the re-engagement/re-instatement of the services of the petitioner on the same post and place along-with seniority and continuity. However, the petitioner is not entitled to any back-wages. The reference is disposed off in the aforesaid terms.

37. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 2nd day of Jan., 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, SHIMLA

Reference Number : 105 of 2019

Instituted on : 08-07-2019

Decided on : 02-01-2023

Jogi Ram s/o Shri Moli Ram, r/o Village Shiroan, P.O. Shilla, Sub Tehsil Kamrao, District Sirmour, H.P.*Petitioner.*

VERSUS

1. Labour Officer, Sirmour at Nahan, District Sirmour, HP.
2. Principal Chief Conservator of Forest, Government of HP Shimla.
3. The Divisional Forest Officer, Forest Division, Renukaji District Sirmour, HP.
4. The Range Officer, Kaffota Range, Forest Division, Kafotta, District Sirmour, HP.*Respondents.*

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Shri Madan Gopal, Advocate.

For the Respondents : Ms. Reena Chauhan, ADA

AWARD

The following reference petition has been, received from the appropriate government, *vide* notification dated 01.07.2019, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether the termination of services of Shri Jogi Ram s/o Shri Moli Ram r/o Village Shiroan, P.O. Shilla, Sub Tehsil Kamrao, District Sirmour, HP by the Divisional Forest Officer, Forest Division, Renukaji District Sirmour, HP during 2016, as alleged by the workman, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what relief including reinstatement, seniority, amount of back-wages, past service benefits and compensation the above ex-worker is entitled to from the above employer?”

2. Key facts necessary for the disposal of the present reference petition as alleged by the petitioner in the statement of claim are thus that he was engaged as part time labourer by the respondents in the month of July 1980 and after serving for more than seven years, the respondent induct the petitioner on daily basis by verbal order and he was posted under Forest Division Rajgarh where he worked continuously till 30.8.1999 and on 31.8.1999, the petitioner was not allowed to join his duties and he was forced to leave his job. The petitioner approached the Administrative Tribunal and pursuant to order dated 09.01.2004, passed by the Administrative Tribunal the services of the petitioner were reinstated but in the month of November 2016, respondents again terminated the services of the petitioner without any prior notice. The services of the petitioner have been terminated by the respondents illegally without complying with the provisions of the Act.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

“That the petition be reinstated in service retrospectively along-with consequential relief of back-wages, continuity, seniority and other allied service benefits and his services may kindly be regularized along-with all other consequential benefits.”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections that the claim is time barred, not approached this Court with cleand hands and no cause of action.

5. On merits, it is submitted that the petitioner was engaged in the year 1979 as seasonal forestry worker and he had never completed 240 working days in any calendar year. The services of the petitioner were never terminated by the respondent rather he used to left the job at his own sweet will. The respondents have not violated any provisions of the Act. It is therefore prayed that the claim petition filed by the petitioner may kindly be dismissed.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondents and reaffirmed and reiterated those raised in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, *vide* zimni order dated 23.08.2021, as under:

1. Whether the termination of the petitioner during 2016 without complying with the provisions of the Industrial Disputes Act, is illegal and unjustified? . . . *OPP*.
2. If issue no.1 is proved in affirmative then what relief the petitioner is entitled to? . . . *OPP*.
3. Whether the petition is not maintainable as alleged? If so, its effect thereto? . . . *OPR*.
4. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No.1	No
Issue No.2	Not entitled to any relief
Issue No.3	No
Relief.	Reference petition is answered in negative as per operative part of the award.

REASONS FOR FINDINGS

ISSUES NO.1 & 2

11. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. It is particular to mention herein that this Court vide order dated 26.12.2022, observed that the case is listed for entire evidence of the petitioner since 23.08.2021. A period of approximately one year has already been elapsed. This Court afforded as many as 11 (eleven) opportunities to the petitioner. Sufficient opportunities were afforded to the petitioner. The Ld. Counsel for the petitioner apprised to the fact that it be treated as last opportunity. No further opportunity shall be granted for recording the evidence of the petitioner. Despite the fact petitioner witnesses were not examined on behalf of the petitioner. Subsequently, this Court vide order dated 05.11.2022, has ordered that no witness are present despite the last opportunity on behalf of the petitioner. The Ld. Counsel for the petitioner prayed some more time for recording the evidence on behalf of the petitioner, the prayer is declined. The Ld. Counsel for the petitioner has already been apprised of the fact that sufficient opportunities were afforded and it be treated as last opportunity failing which shall automatically deemed to be closed. The perusal of case record would revealed that the case is listed for entire evidence of the petitioner since 23.08.2021 a period of more than one year has already been elapsed. This Court afforded as many as 11 (Eleven) opportunities to the petitioner. Sufficient opportunities were afforded to the petitioner. No further opportunity shall be granted for recording the evidence of the petitioner. Therefore, this Court is left with no other

alternative but to close the evidence of the petitioner by the order of the Court and accordingly the same is hereby ordered to be closed.

13. More particularly, it is the bounded duty of the petitioner to prove his case by leading cogent and clinching evidence. Petitioner is the master of his own case and he cannot taken any undue advantages of the weaknesses of the respondents. It is the petitioner who alleges must prove his case before this Court. In the absence of any cogent and clinching proof, both in shape of oral and documentary, leads to this Court to held that the petitioner is not entitled to any relief as alleged.

14. For the foregoing reasons, in view of discussion and finding arrived at by me hereinbefore, the present reference is ordered to be answered in negative as both the aforesaid issues are answered in negative.

ISSUE NO.3

15. In support of this issue no specific evidence has been led by the respondent, which could go to show that as to how the present petition is not maintainable especially when the same has been filed pursuant to the reference received from appropriate government. I find nothing wrong with this petition which is perfectly maintainable in the present form. Therefore, in view of no evidence led from the side of the respondent, this issue is answered agaisnt the respondent.

RELIEF

16. As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner deserve dismissal and the same is accordingly dismissed. Resultantly, the reference stands answered in negative. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 2nd day of Jan., 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 84 of 2017

Instituted on : 02-06-2017

Decided on : 02-01-2023

Uday Bhardwaj s/o Late Shri Topi Ram Bhardwaj, CSC Lokmitra Kendra, Near Tehsil Chowk, Naya Road Shillai, Tehsil Shillai, District Sirmaur, H.P. .*Petitioner.*

VERSUS

1. The Editor Amar Ujala Publications Ltd., SCO 34 to 37, Sector 9-D, Chandigarh UT.
2. The Amar Ujala Daily Newspaper District Office, Nahan, District Sirmaur, H.P.
.. Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947

For Petitioner : Shri R.K. Khidtta, Advocate

For Respondent : Shri Aman Sood, Advocate

AWARD

The following reference petition has been, received from the Labour-cum-Conciliation Officer, Sirmaur at Nahan vide notification dated 20.04.2017, under section 17 of the Working Journalists and Other Newspaper Employees (Conditions of Service) Act, 1955 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether the action of the employers Director/ Deputy General Manager Amar Ujala Publications Ltd. registered office at 1101, 11th Floor, Antriksh Bhawan 22, Kasturba Gandhi Marg, Connaught Place, New Dehli 110001 and AmayDaily Newspaper District Office, Nahan, District Sirmaur, HP for not paying claim of arrears amounting to Rs. 8,53,000/- (Eight Lakhs Fifty Three Thousand only) to Shri Uday Bhardwaj S/o Late Shri Topi Ram Bhardwaj, CSC Lokmitra Kendra, Near Tehsil Chowk, Naya Road Shillai, Tehsil Shillai, District Sirmaur, HP as difference of wages actually drawn and due as per recommendation of Majithia Wage Boards (copy of claim enclosed) constituted under section 9 & 13(C) of the Working Journalists and Other Newspaper Employees (Conditions of Service) Act, 1955 is legal and justified? If yes, to what amount of relief/arrear, alongwith interest etc., the aggrieved employee is entitled to from the above employers/management?”

2. On receipt of the said reference from the Labour-cum-Conciliation Officer, Sirmaur at Nahan, notices were issued to the concerned parties in pursuance to which the petitioner has filed his statement of claim praying therein that the claim petition filed by him may kindly be allowed and the respondent may kindly be directed to pay the differential wage amount of Rs. 8,53,000/- (Eight Lakhs Fifty Three Thousand only) with interest @ 12 % per annum and further the respondent may kindly be directed to reinstate him with all consequential service benefits including full back-wages.

3. To the fore, Shri Uday Bhardwaj petitioner has stated that the matter has been fully and finally settled between the parties by way of an amicable settlement and as such he does not want to proceed further with the present reference petition which may kindly be answered as compromised. To this effect his statement recorded separately.

4. Shri Shivom Aggerwal, Sr. Manager, HR for the respondent, vide his separate statement, has stated that since the matter has been fully and finally settled between the parties and now nothing survive in the present reference petition which may kindly be decided accordingly.

5. Thus, keeping in view the attendant facts and circumstances of the case *vis- a-vis* perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial

Dispute raised from the side of the petitioner stood amicably resolved and finally compromised between the parties. From the aforesaid statements of the parties, it is apparently established that the parties have compromised the industrial dispute arising out of reference no. 84 of 2017.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. Consequently, the industrial dispute raised by the petitioner stood amicably settled.

7. The reference is answered accordingly and the award is passed as per the statements of parties, which shall form the integral part and parcel of this award.

8. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced : 02-01-2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 118 of 2017

Instituted on : 01-08-2017

Decided on : 02-01-2023

Bhupinder Chauhan s/o Shri Jagat Ram Chauhan, r/o Karam Villa, Dhingu Dhar, Sanjauli,
Tehsil & District Shimla, H.P. . *Petitioner.*

VERSUS

M/s Satya Sawadesh VPO Badhani, District Pathankot, Punjab through its Managing
Director/Authorized Signatory . *Respondents.*

**Reference under section 17 of the Working Journalists and Other Newspaper
Employees (Conditions of Service) Act, 1955.**

For the Petitioner : Shri Niranjana Verma

For the Respondent : Ex-parte

A W A R D

The following reference petition has been, received from the Labour Officer, Shimla, vide notification dated 12.06.2017, under section 17 of the Working Journalists and Other Newspaper Employees (Conditions of Service) Act, 1955 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether the action of the employers M/s Managing Director Satya Sawadesh VPO Badhani, District Pathankot, Punjab for not paying claim of arrears amounting to Rs. 7,08,305/- (Seven Lakhs Eight Thousand Three Hundred Five only) to Shri Bhupinder Chauhan s/o Shri Jagat Ram Chauhan, r/o Karam Villa, Dhingu Dhar, Sanjauli, Tehsil & District Shimla, HP as difference of wages actually drawn and due as per recommendation of Majithia Wage Boards (copy of claim enclosed) constituted under section 9 & 13(C) of the Working Journalists and Other Newspaper Employees (Conditions of Service) Act, 1955 is legal and justified? If yes, to what amount of relief/arrears, alongwith interest etc., the aggrieved employee is entitled to from the above employers/management?”

2. Key facts necessary for the disposal of the present reference petition as alleged by the petitioner in the statement of claim are thus that he was engaged as Special Correspondent by the respondent from 1.4.2014 for Shimla region and his monthly salary was fixed at Rs. 14,000/- and he worked continuously till 30.04.2015. The respondent has not paid the wages to the petitioner as per the Majithia Board recommendations w.e.f. 11.11.2011 and has only paid much lesser salary. The petitioner was entitled for basic salary of Rs. 19,000/- + 35 % variable pay i.e. Rs. 6650/-+ DA and as such the petitioner is entitled for Rs. 7,08,305/- as difference of wages for the period of 13 months as per section 17 (2) of the Working Journalist and Other Newspaper Employees (Conditions of Service), Act 1955 and as per Majithia Wage Board recommendations.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

“In view of the facts and submissions made herein above, the petitioner prays that an award may very kindly be passed in his favour of the petition and against the respondent along-with interest @ 12% per annum from the due date in the interest of justice and fair play. ”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, the petition has been moved with ulterior motives, no cause of action has accrued to the petitioner, no come with clean hands, petition is bad for non-joinder and mis-joinder of proper and necessary parties and estoppel.

5. On merits, it is submitted that the petitioner has was working as a admission consultant for Sri Sai College of Engineering and Technology, hence, the question of paying wages to him as per Majithia Wage Board recommendations w.e.f. 11.11.2011 does not arise at all. The petitioner was never employed as a special correspondent by the respondent and as such the question of performing the duties by him with the respondent regularly without any break since April 2014 to April 2015, does not arise. It is therefore prayed that the claim petition filed by the petitioner may kindly be dismissed.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondents and reaffirmed and reiterated those raised in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 12.07.2018, as under:

1. Whether the non-payment of claim of arrears amounting to Rs. 7,08,305/- (Seven Lakhs Eight Thousand Three hundred five only) to the petitioner as per recommendations of Majithia Wage Board constituted under section 9 & 13 (C) of the Working Journalists and Other Newspaper Employees (Conditions of Service) Act, 1955 by the respondent is illegal and unjustified as alleged? ..OPP.

2. If issue no.1 is proved in affirmative to what amount of arrears of unpaid wages or claim and interest, compensation or any other relief the petitioner is entitled? . . .*OPP*.

3. Whether the petition is not maintainable as alleged? . . .*OPR*.

4. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No.1 No

Issue No.2 Not entitled to any relief

Issue No.3 No

Relief Reference petition is answered in negative as per operative part of the award.

REASONS FOR FINDINGS

ISSUES NO.1 & 2

11. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. It is particular to mention herein that this Court vide order dated 17.12.2022, observed that the case is listed for entire evidence of the petitioner since 12.07.2018. A period of approximately four years and five months has already been elapsed. This Court afforded as many as 17 (seventeen) opportunities to the petitioner. Sufficient opportunities were afforded to the petitioner. The Ld. Counsel for the petitioner apprised to the fact that it be treated as last opportunity. No further opportunity shall be granted for recording the evidence of the petitioner. Despite the fact petitioner witnesses were not examined on behalf of the petitioner. Subsequently, this Court vide order dated 05.11.2022, has ordered that no witness are present despite the last opportunity on behalf of the petitioner. The Ld. Counsel for the petitioner prayed some more time for recording the evidence on behalf of the petitioner, the prayer is declined. The Ld. Counsel for the petitioner has already been apprised of the fact that sufficient opportunities were afforded and it be treated as last opportunity failing which shall automatically deemed to be closed. The perusal of case record would revealed that the case is listed for entire evidence of the petitioner since 12.07.2018 a period of approximately four years five months has already been elapsed. This Court afforded as many as 17 (seventeen) opportunities to the petitioner. Sufficient opportunities were afforded to the petitioner. No further opportunity shall be granted for recording the evidence of the petitioner. Therefore, this Court is left with no other alternative but to close the evidence of the petitioner by the order of the Court and accordingly the same is hereby ordered to be closed.

13. More particularly, it is the bounded duty of the petitioner to prove his case by leading cogent and clinching evidence. Petitioner is the master of his own case and he cannot taken any undue advantages of the weaknesses of the respondents. It is the petitioner who alleges must prove his case before this Court. In the absence of any cogent and clinching proof, both in shape of oral and documentary, leads to this Court to held that the **petitioner is not entitled to revised wages as per the recommendations of Majithia Wage Board and is thus entitled to arrears amounting to ₹ 7,08,305/- (Seven Lac Eight Thousand Three Hundred Five only) as alleged.**

14. For the foregoing reasons, in view of discussion and finding arrived at by me hereinbefore, the present reference is ordered to be answered in negative as both the aforesaid issues are answered in negative.

ISSUE NO.3

15. In support of this issue no specific evidence has been led by the respondent, which could go to show that as to how the present petition is not maintainable especially when the same has been filed pursuant to the reference received from Labour-cum-Conciliation Officer. I find nothing wrong with this petition which is perfectly maintainable in the present form. Therefore, in view of no evidence led from the side of the respondent, this issue is answered against the respondent.

RELIEF

16. As a sequel to my above discussion and findings on issues no.1 to 3, the claim of the petitioner deserve dismissal and the same is accordingly dismissed. Resultantly, the reference stands answered in negative. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 2nd day of Jan., 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, SHIMLA

Reference Number : 136 of 2020
Instituted on : 31-08-2021
Decided on : 02-01-2023

Sukhvinder Singh s/o Shri Jagat Ram r/o Village Palasara Nihala, P.O. Nangal, Tehsil Nalagarh, District Solan, H.P. . *Petitioner.*

VERSUS

The Managing Director M/s Samarth Life Science Pvt. Ltd., Unit-II, Plot No.2, Industrial Area Lodhi Majra, Baddi, District Solan, H.P. . Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Khushi Ram Verma, Advocate

For respondent : Shri Rajiv Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 29.06.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the services of Sukhvinder Singh s/o Shri Jagat Ram r/o Village Palasara Nihala, P.O. Nangal, Tehsil Nalagarh, District Solan, HP w.e.f. 16.07.2019 by the Factory Manager M/s Samarth Life Science Pvt. Ltd., Unit-II, Plot No.2, Industrial Area Lodhi Majra, Baddi, District Solan, HP without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what relief including reinstatement, back wages, seniority, past service benefits and compensation the above aggrieved workman, is entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri Khushi Ram, Advocate has appeared on behalf of the petitioner whereas Shri Rajiv Sharma, Advocate had appeared for respondent.

3. To the fore Shri Jitender Kumar, Manager, Administration of respondent company has stated at the bar that the Industrial Dispute raised on behalf of the petitioner stood amicably resolved by way of an amicable settlement (PZ) and the respondent company has agreed to pay an amount of Rs. 1,55,000/- (One Lakhs Fifty Five Thousand Only) towards full and final settlement amount of the claim. He has also placed on record copy of cheque (PX), copy of UPI transaction of Rs. 5,000/- (PY) and authority letter (PZ) and copy of Aadhar Card of petitioner (PW). To this effect his statement recorded separately and placed on record.

4. Vide separate statement the petitioner, has stated that he had raised an industrial dispute regarding the termination of his services by the respondent management, without complying in the provision of the Industrial Dispute Act 1947, for which the reference has been received from the appropriate government for its legal adjudication. He further stated at the bar that the aforesaid industrial dispute raised on his behalf stood amicably resolved by way of an amicable settlement. As per the settlement the respondent/company is ready and willing to make him the full and final payment towards lump sum compensation amounting to Rs. 1,55,000/- (One Lakhs Fifty Five Thousand Only), which the acceptable to him, which he received today in the Court. Nothing survives in the present reference petition. The above said statement was read over and explained to him which is duly accepted by him.

5. Thus, keeping in view that attendant facts and circumstances of the case *vis-a-vis* perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by

the petitioner and he has been paid a sum of **Rs. 1,55,000/- (One Lakhs Fifty Five Thousand Only) through cheque No. 006667 dated 28.12.2022** as full and final settlement amount of the claim today in the Court. Therefore, the industrial dispute raised from the side of the petitioner arising out of reference no. 136 of 2020, stood amicably settled between the parties.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying Rs. 1,55,000/- (One Lakhs Fifty Five Thousand Only) through cheque No. 006667 dated 28.12.2022. The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record i.e. copy of cheque (PX), copy of UPI transaction of Rs. 5,000/- (PY), and authority letter (PZ) and copy of Aadhar Card of petitioner (PW), which shall form the integral part and parcel of this award.

7. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced : 02-01-2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 33 of 2019

Instituted on : 14-01-2019

Decided on : 02-01-2023

Dev Raj Sharma s/o Shri Thutha Ram, r/o Kashyap Niwas, Sheetla Mandir, Kasauli Road,
Parwanoo, District Solan, H.P. . .Petitioner.

VERSUS

The Occupier/Factory Manager M/s Spectra Equated System, Near Gurudwara, Ucha
parwanoo, Tehsil Kasauli, District Solan, H.P. . .Respondent.

Reference under Section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Shri M.N Shukla, Advocate

For the Respondent : Shri Vishal Sharma, Advocate

AWARD

The following reference petition has been, received from the appropriate government, vide notification dated 2.1.2019, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, which reads as under:

“Whether contention of Shri Dev Raj Sharma s/o Shri Thutha Ram, r/o Kashyap Niwas, Sheetla Mandir, Kasauli Road, Parwanoo, District Solan, H.P. that he resigned from the services on 31.3.2017 under duress of the management M/s Spectra Equated System, Near Gurudwara, Ucha Parwanoo, Tehsil Kasauli, District Solan, HP is legal and justified? If yes, what relief including reinstatement, amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. Key facts necessary for the disposal of the present reference petition as alleged by the petitioner in the statement of claim are thus that he was appointed by the respondent company as Production Engineer vide appointment letter dated 16.12.2009 and he was being paid a sum of Rs. 11000/- per month as salary. In the month of March 2017, the petitioner fell ill and he had to go for major surgery for which he needed money and as such he approached the officials of the company for financial help but he was asked to sign some papers and assured to give money and after 15-20 days the petitioner received ₹ 21808/- and Rs. 5229/- as his outstanding amount. The petitioner after his treatment, approached the respondent company to take him back in service but of no avail. The petitioner never resigned from service and he has been forcibly ousted from the company without following any procedure of law.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

“That the respondent company be directed to reinstate the petitioner to his original position. The alleged resignation be treated nullity in the eyes of law. That the respondent company be directed to pay the overtime rendered by the petitioner @ of 2 hours per day since appointment of the petitioner. That the amount paid to the petitioner be treated as loan and deducted from his salary. That without any prejudice the petitioner also prays for the benefits permissible under payment of Gratuity Act and section 25 of the Industrial Disputes Act and other provisions of law.”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia raising preliminary objections of no locus standi, maintainability, the petitioner not come with clean hands, estoppel, petition lacks material particulars, petition is bad for misjoinder of parties, time barred and this Court has not competent jurisdiction to entertain, try and adjudicate the present petition.

5. On merits, it is denied that the petitioner used to work for a period of 12 hours from the beginning. It is further denied that the petitioner fell ill in the month of March 2017. It is submitted that the petitioner has shown his willingness that he does not to work with the respondent and he resigned from the company. The resignation was duly accepted by the respondent company and after that he has been paid the amount due towards gratuity and bonus. It is further denied that the petitioner approached the respondent for his re-instatement. It is therefore prayed that the claim petition filed by the petitioner may kindly be dismissed.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondents and reaffirmed and reiterated those raised in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 19.03.2022, as under:

1. Whether the contention of the petitioner that he resigned from the services on 31.3.2017 under duress of the respondent management is illegal and unjustified? If so, what relief the petitioner is entitled to? . . .*OPR*.
2. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
3. Whether there exists no employer/employee relationship between the parties as alleged? . . .*OPR*.
4. Whether the petitioner has not come with clean hands and is guilty of concealment of material facts, as alleged? . . .*OPR*.
5. Relief
8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.
9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.
10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No.1	No. Not entitled to any relief
Issue No.2	No
Issue No.3	No
Issue No.4	No
- Relief. Reference petition is answered in negative as per operative part of the award.

REASONS FOR FINDINGS

ISSUE NO.1

11. It is particular to mention herein that this Court vide order dated 28.12.2022, observed that the case is listed for entire evidence of the petitioner since 19.03.2022. A period of approximately one year has already been elapsed. This Court afforded as many as 8 (Eight) opportunities to the petitioner. Sufficient opportunities were afforded to the petitioner. The Ld. Counsel for the petitioner apprised to the fact that it be treated as last opportunity. No further opportunity shall be granted for recording the evidence of the petitioner. Despite the fact petitioner witnesses were not examined on behalf of the petitioner. Subsequently, this Court vide order dated 21.09.2022, has ordered that no witness are present despite the last opportunity on behalf of the petitioner. The Ld. Counsel for the petitioner prayed some more time for recording the evidence on behalf of the petitioner, the prayer is declined. The Ld. Counsel for the petitioner has already been apprised of the fact that sufficient opportunities were afforded and it be treated as last opportunity failing which shall automatically deemed to be closed. The perusal of case record would revealed that the case is listed for entire evidence of the petitioner since 19.03.2022 and a period of approximately one year has already been elapsed. This Court afforded as many as 8 (Eight) opportunities to the petitioner. Sufficient opportunities were afforded to the petitioner. No further

opportunity shall be granted for recording the evidence of the petitioner. Therefore, this Court is left with no other alternative but to close the evidence of the petitioner by the order of the Court and accordingly the same is hereby ordered to be closed.

12. More particularly, it is the bounded duty of the petitioner to prove his case by leading cogent and clinching evidence. Petitioner is the master of his own case and he cannot taken any undue advantages of the weaknesses of the respondents. It is the petitioner who alleges must prove his case before this Court. In the absence of any cogent and clinching proof, both in shape of oral and documentary, leads to this Court to held that the **contention of the petitioner that he resigned from the services on 31.3.2017 under duress of the respondent management is not illegal and unjustified.**

13. For the foregoing reasons, in view of discussion and finding arrived at by me hereinbefore, the present reference is ordered to be answered in negative as the aforesaid issue is answered in negative.

ISSUE NO. 2

14. In support of this issue no specific evidence has been led by the respondent, which could go to show that as to how the present petition is not maintainable in the present form especially when the same has been filed pursuant to the reference received from appropriate government. I find nothing wrong with this petition which is perfectly maintainable in the present form. Therefore, in view of no evidence led from the side of the respondent, this issue is answered against the respondent.

ISSUES No. 3 & 4

15. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

16. In support of these issues no specific evidence has been led by the respondent. Therefore, in the absence of any specific evidence on these issues, both are decided against the respondent company.

RELIEF

17. As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner deserve dismissal and the same is accordingly dismissed. Resultantly, the reference stands answered in negative. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 2nd day of Jan., 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 219 of 2020

Instituted on : 18-09-2020

Decided on : 02-01-2023

1. The General Secretary, KarchamWangtu and Baspa-II, Hydro Electric Project Workers Union Kinnaur, H.P.

2. Vivek Negi (Employee Code No.1 HB050) Mechanic, KarchamWangtu, HEP Sholtu Colony, PO Tapri, Tehsil Nichar, District Kinnaur, H.P. .*Petitioners.*

VERSUS

The Senior Vice President & Head (Hydro) Himachal Baspa Power Company Ltd., KarchamWangtu and Baspa-II, Hydro Electric Project Sholtu Colony, PO Tapri, Tehsil Nichar District Kinnaur, H.P. .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For Petitioner : Shri Niranjana Verma, Advocate

For Respondent : Shri Rahul Mahajan, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 07.09.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

1. **“Whether domestic enquiry conducted by the management of Himachal Baspa Power Company Ltd., KarchamWangtu and Baspa-II, Hydro Electric Project Sholtu Colony PO Tapri, Tehsil Nichar, District Kinnaur, HP against Shri Vivek Negi (Employee Code No. 1HB050) Mechanic is proper and fair?”**
2. **Whether the demand of the General Secretary, KarchamWangtu and Baspa-II, Hydro Electric Project Workers Union, PO Tapri, Tehsil Nichar, District Kinnaur, HP vide demand notice dated 18.01.2018 (copy enclosed) before the Senior Vice President & Head (Hydro) Himachal Baspa Power Company Ltd., Karcham Wangtu and Baspa-II, Hydro Electric Project Sholtu Colony, PO Tapri, Tehsil Nichar District Kinnaur, HP to withdraw the major penalty of reduction of rank or grade or lower stage in the same grade imposed upon Shri Vivek Negi (Employee Code No.1HB050) Mechanic vide order dated 11.02.2017, is legal and justified? If yes, what consequential service benefits, seniority and back-wages aggrieved Shri Vivek Negi, Mechanic is entitled to from the above management?”**

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has filed his statement of claim praying therein that this Hon’ble Court be pleased to set aside the enquiry report and the office

order dated 11.02.2017 issued by the disciplinary authority by which the rank of the petitioner was reduced being unjust, oppressive, unconscionable and nullity in the eyes of law and respondent may kindly be ordered to restore the previous rank of the petitioner in the service with all consequential benefits i.e seniority and back-wages etc., in the interest of justice and fair play.

3. To the fore, Shri Niranjana Verma, Ld. Counsel for the petitioner has stated that the matter has been fully and finally settled between the parties by way of an amicable settlement and as such the petitioner does not want to proceed further with the present reference petition which may kindly be answered as compromised. To this effect his statement recorded separately.

4. Shri Rahul Mahajan, Ld. Counsel for the respondent, vide his separate statement, has stated that since the matter has been fully and finally settled between the parties and now nothing survive in the present reference petition which may kindly be decided accordingly.

5. Thus, keeping in view the attendant facts and circumstances of the case *vis-a-vis* perusal of the case record manifestly and conclusively goes to demonstrate that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised between the parties. From the aforesaid statements of the Ld. Counsel for the parties, it is apparently established that the parties have compromised the industrial dispute arising out of reference no. 219 of 2020.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled.**

7. The reference is answered accordingly and the award is passed as per the statements of parties, which shall form the integral part and parcel of this award.

8. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced : 02-01-2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 169 of 2022

Instituted on : 20-05-2022

Decided on : 02-01-2023

Bablu s/o Shri Dassa Ram, r/o Village Kilod, P.O. Oachghat, Tehsil & District Solan, H.P.

. Petitioner.

VERSUS

The Prop. Shri Deant Singh M/s HP Petrol Pump, Kundla, HP Centre Zero Point Oachghat, District Solan, H.P. . Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For Petitioner : Shri Rohit Sharma, Advocate

For Respondent : Shri Amrish Kanwar, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 29.04.2022, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the services of Shri Bablu s/o Shri Dassa Ram, r/o Village Kilod, P.O. Oachghat, Tehsil & District Solan, HP by the Prop. Shri Deant Singh M/s HP Petrol Pump, Kundla, HP Centre Zero Point Oachghat, District Solan, H.P. w.e.f. 12.12.2020, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement of the service, seniority, amount of back wages, past service benefits and compensation the above aggrieved workman is entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has filed his statement of claim praying therein for his reinstatement with all service benefits including back-wages.

3. To the fore, Shri Amrish Kanwar, Ld. Counsel for the respondent has stated that the matter has been fully and finally settled between the parties by way of an amicable settlement as a result of which the respondent is ready to pay a sum of ₹ 45,000/- (Forty Five Thousand), today through cheque no. 51244 dated 27.12.2022 (PY) towards lump sum compensation, which shall include the past service benefits, back-wages, compensation etc. To this effect his statement recorded separately.

4. Shri J.C. Bhardwaj, AR for the petitioner, vide his separate statement, has stated that he has heard and understood the statement of Shri Amrish Kanwar, Advocate for the respondent, who is ready and willing to pay lump sum compensation amount to the petitioner amounting to ₹ 45,000/- (Forty Five Thousand), which is duly acceptable to him. He has received the cheque no. 51244 dated 27.12.2022 amounting to Rs. 45000/- (PY), today in the Court and now nothing survive in the present reference petition.

5. Thus, keeping in view the attendant facts and circumstances of the case *vis-a-vis* perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the late petitioner stood amicably resolved and finally compromised between the parties and the respondent has paid a sum of Rs. 45000/- (Forty Five Thousand) as full and final settlement amount of the claim through cheque no. 51244 dated 27.12.2022 (PY) today in the Court. From the aforesaid statements of the parties, it is apparently established that the parties have compromised the industrial dispute arising out of reference no. 169 of 2022.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner**

has been fully & finally compensated as the respondent has paid a sum of Rs. 45000/- (Forty Five Thousand) as full and final settlement amount of the claim through cheque no. 51244 dated 27.12.2022 (PY) today in the Court.

7. The reference is answered accordingly and the award is passed as per the statements of parties and copy of cheque, which shall form the integral part and parcel of this award.

8. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced : 02-01-2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Application Number : 14 of 2022

Instituted on : 10-01-2022

Decided on : 02-01-2023

Prem Chand s/o Shri Krishnu Ram, r/o VPO Kohu, Tehsil Ramshahar, District Solan, H.P.
. *Petitioner.*

VERSUS

The General Manager M/s BETA Drugs Ltd., Village Nandpur, P.O. Lodhi Majra, Tehsil Baddi, District Solan, H.P.
. *Respondent.*

Claim petition under section 2-A of the Industrial Disputes Act, 1947

For petitioner : Shri Niranjana Verma, Advocate

For respondent : Shri Dheeraj Bansal, Advocate

ORDER/AWARD

The present application has been filed directly before this Court/Tribunal by the applicant under section 2-A(1) of the Industrial Disputes Act, 1947 praying therein that this Hon'ble Court/Tribunal be pleased to allow the application/claim of the applicant/petitioner holding his retrenchment/termination to be wholly improper and unjustified and consequently holding the workman to be entitled to all service benefits including back-wages, seniority etc., in the interest of justice.

2. On receipt of the aforesaid application, notices were issued to the respondent pursuant to which Shri Ashutosh Bhardwaj, Advocate had appeared for respondent.

3. To the fore Shri Ankit Sharma, Manager, HR of respondent company has stated at the bar that the Industrial Dispute raised on behalf of the petitioner stood amicably resolved by way of an amicable settlement (PZ) and the respondent company has agreed to pay an amount of Rs. 51,562/- (Rs. Fifty One Thousand Five Hundred Sixty Two), towards full and final settlement amount of the claim. He has also placed on record full & final settlement (PZ) and resignation tendered by the petitioner (PX). To this effect his statement recorded separately and placed on record.

4. Vide separate statement Shri Niranjana Verma, Advocate for the petitioner, has stated that the industrial dispute raised on behalf of the petitioner stood amicably resolved by way of an amicable settlement. As per the settlement the respondent/company is ready and willing to make him the full and final payment towards lump sum compensation amounting to **Rs. 51,562/- (Rs. Fifty One Thousand Five Hundred Sixty Two)**, which is acceptable to the petitioner. Nothing survives in the present petition. The above said statement was read over and explained to him which is duly accepted by him.

5. Thus, keeping in view that attendant facts and circumstances of the case vis- a -vis perusal of the case record manifestly and conclusively goes to demonstrate that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and he has been paid a sum of Rs. 51,562/- (Rs. Fifty One Thousand Five Hundred Sixty Two), as full and final settlement amount of the claim today in the Court. Therefore, the industrial dispute raised from the side of the petitioner arising out of Application no. 14 of 2022, stood amicably settled between the parties.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying Rs. 51,562/- (Rs. Fifty One Thousand Five Hundred Sixty Two).** The application is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record i.e. full and final settlement (PZ) and resignation tendered by the petitioner (PY), which shall form the integral part and parcel of this award.

7. The present petition is disposed off accordingly. Let a copy of this order/award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced : 02-01-2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Application Number : 28 of 2021

Instituted on : 11-12-2019

Decided on : 02-01-2023

Mohan Lal s/o Shri Dhani Ram, r/o Village Bhulla Kashmiri, PO Saryanj, Tehsil Arki, District Solan H.P. . *Petitioner.*

VERSUS

1. Executive Engineer, Electrical Division HPSEBL, Arki, District Solan, H.P.
2. SDO Electrical Sub Division, HPSEBL, Darla Division, Arki, District Solan, H.P. . *Respondents.*

Application under section 2(A) 2 of Industrial Disputes (Amendment) Act, 2010.

For the Petitioner : Shri Raj Kumar, Advocate

For the Respondents : Shri Surinder Sharma, Adv.

ORDER/AWARD

This is an application on behalf of the claimant in terms of section 2(A) 2 of the Industrial Disputes Act (Amendment) Act, 2010 (hereinafter to be referred as the Act) seeking reinstatement along-with all consequential benefits including back-wages, seniority, continuity and regularization.

2. Key facts necessary for the disposal of the present petition as alleged by the petitioner in the application are thus that he was initially engaged on daily wage basis w.e.f. 1986 and worked till 1995. The services of the petitioner were terminated without assigning reasons and without serving any prior notice as required under section 25-F of the Act and without paying compensation. The respondent had engaged fresh persons and retained many juniors after the illegal termination of the petitioner. The petitioner had completed 240 working days in a calendar year. There is violation of sections 25-B, 25-F, 25-G and 25-H of the Act.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

“It is therefore respectfully prayed that directions may kindly be issued to the respondents to re-instate the claimant in service along-with all consequential benefits/relief(s) of back-wages, seniority, continuity and regularization of service and the cost of the petition may kindly be awarded in favour of the claimant in the interest of law and justice”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia raising preliminary objections of no cause of action, the petitioner has not come to the Court with clean hands and there is no industrial dispute in between the petitioner and the respondent.

5. On merits, it is submitted that the petitioner was engaged as casual labourer by the respondent from 22.01.1993 to 30.04.1993 and thereafter he had worked with the respondent from 20.01.1993 to 30.04.1993. The petitioner had left the job on his own sweet will. The petitioner had not completed 240 days in any calendar year. The services of the petitioner have never been terminated by the respondent who himself had abandoned the job and never turned back, hence, the violation of the provisions of section 25-F of the Act, does not arise at all.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 07.04.2022, as under:

1. Whether the termination of the services of the petitioner by the respondent without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? If so what relief of service benefits the petitioner is entitled to? . . . *OPP*.
2. Whether the claim petition filed by the petitioner is neither competent nor maintainable in the present form, as alleged? . . . *OPR*.
3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No.1	Decided accordingly
Issue No.2	Yes
Relief	Application dismissed as per operative part of award/order

REASONS FOR FINDINGS

ISSUES NO.1 & 2

11. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. In order to substantiate its case, the petitioner has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition. He also tendered into evidence demand notice (PW-1/B) and proceedings Mark P-1.

13. In cross-examination, on behalf of respondent, he denied that he had abandoned the job in the year 1993. He further denied that he had not completed 240 days in a calendar year. He admitted that he filed a case before the Hon'ble High Court which was withdrawn. He further admitted that he filed representation before the respondent which was considered and rejected.

14. In order to rebut, the respondent has examined Shri Joginder Singh, Sr. Assistant of respondent as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence mandays chart (R-1), copy of order dated 30.10.2018 (R-2), copy of order dated 3.4.2013 (R-3), copy of judgments dated 10.10.2012 and 01.03.2011 Mark RX-1 and Mark RX-2 respectively.

15. In cross-examination, on behalf of petitioner he denied that the respondent had engaged new hands for work. He further denied that s/o Shri Tulsi Ram, Kirpa Ram are still working with the respondent. He denied that the petitioner had completed 240 days in a calendar year. He also denied that the services of the petitioner were terminated without issuing any notice and paying any retrenchment compensation.

16. This is the entire oral as well as documentary evidence adduced from the side of the parties.

17. Shri Rajkumar, Ld. Counsel for the petitioner has contended with all vehemence that the time period from the date of raising of demand notice has exceeded the prescribed period. He further contended that the services of the petitioner were terminated without issuing any show cause notice, chargesheet and without paying any retrenchment compensation, hence, the illegal termination of the petitioner amounts to “retrenchment”. It is therefore prayed that the petitioner is entitled to be reinstated in service along-with all consequential service benefits including back-wages. He has also placed on record the copy of award dated 17.3.2017 passed by this Tribunal in **reference no. 1 of 2016 and judgment passed by the Hon’ble High 4696 of 2009 decided on 1.3.2011 titled as Mansa Ram vs. State of HP and Ors.**

18. *Per contra*, Shri Surender Sharma, Ld. Counsel for the respondent urged that the present petition which has been filed by the petitioner directly before this Court is not maintainable. He further argued that the services of the petitioner were never terminated by the respondent. The petitioner himself abandoned the job without any reason. He also argued that the petitioner had not completed 240 days in any calendar year. He prayed for the dismissal of the claim petition.

19. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Thus, from a careful examination of the case record, it is manifestly clear on record that the present application has been filed directly before this Tribunal by the petition by invoking section 2-A of the Act. The provisions of section 2-A are reproduced as under:

“2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.—

- (1) Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.**
- (2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.**

- (3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1)."**

21. Verily, it is pertinent to point out here that the provisions of sub section 2 of section 2-A is a non-obstante clause. Section 2-A of the Act enables the individual workman to raise a dispute connected with or arising out of his discharge, dismissal, retrenchment or otherwise termination of his services by his employer and by legal fiction it would constitute "Industrial Dispute". No other type of dispute regarding an individual workman is contemplated by Section 2A. After the enactment of Section 2A, it is not necessary that a dispute relating to the discharge, dismissal, retrenchment or otherwise termination of service of a workman must be sponsored by a trade union or a substantial number of workman. In other words, even if it is not sponsored by a trade union or a substantial number of workman, such a dispute will be deemed to be an industrial dispute. The said amendment in the Act came into effect on and from 15th September, 2010. In the absence of any specific provision to the contrary Act 24 of 2010 is to be held operative prospectively. The effect of amendment is that any workman who has been discharged, dismissed, retrenched or terminated as specified in sub-section (1) of Section 2A may make an application directly to the Labour Court or Tribunal for adjudication of his individual dispute after the expiry of 45 days from the date he has made an application to the conciliation officer of the appropriate Government for conciliation of the dispute. Sub-Section (3) of Section 2A lays down the time limit for making such application to Labour Court or Tribunal. It provides that such application to the Labour Court or Tribunal for adjudication of the dispute shall be made before the expiry of three years from the date of discharge, dismissal and retrenchment or otherwise termination of service as specified in sub- Section(1). A bare reading of above provision would indicate that a dispute covered under sub-Section(1) can be agitated or questioned by a workman by making an application directly to the Labour Court or Tribunal for adjudication of such dispute and such application should be filed before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service. In other words, the right conferred under Section 2A would lapse immediately preceding the date of expiry of three years of the date of dismissal, discharge etc. Sub-Section (3) of Section 2A would operate independently. The right available to the workman under Section 2A is not withstanding anything contained in Section 10 of the ID Act. Thus, question which would arise for consideration in the instant case is; whether dispute raised beyond three years from the date of discharge, dismissal or retrenchment can be entertained by the Labour Court or Tribunal by condoning the delay if any in raising the dispute or filing a claim petition. Prior to incorporation of Section 2A, a workman had to necessarily depend upon the reference under Section 10(1)(c) of the Act. The incorporation of Section 2A enabled the workman to approach the Labour Court or Tribunal directly and prevented the mischief of unreasonable delay occasioning on account of reference not being referred to by the appropriate Government under Section 10(1)(c) of the Act. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1). Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2-A does not appear to have a bearing to the provisions of sub- Section (2) of Section 2-A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned even by taking recourse to Section 5 of the Limitation Act, 1963, which has no application to the provisions of Industrial Disputes Act, 1947.

22. It is well recognized principle of law that if an act is required to be performed within a specified time, the same would primarily be mandatory. The Hon'ble Apex Court in

the case of Naziruddin VS Sitaram Agarwal reported in AIR 2003 SCW 908, has held as under:

"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."

23. Thus, in the background of the dicta of the Apex Court in Naziruddin's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words 'at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made. The Hon'ble High Court of Karnataka has observed in **Writ Petition No.27510/2015 case titled as M/S ITC Infotech India Ltd., VS Mr. Venkataramana Uppada** that the Labour Court cannot entertain a claim petition filed under Section 2A(2) of the I.D. Act after three years from the date of discharge, dismissal, retrenchment or termination and Labour Court was not justified in condoning the delay of 730 days in filing the claim petition.

24. In the instant case, admittedly, no steps were taken by the petitioner prior to the expiry of three years from the date of such termination to make statutory provision enabling him to approach the Court without the requirement of reference petition to be received from the appropriate government in case of dispute under section 2-A of the Act. Admittedly, the petitioner has claiming that he had worked with the respondent on daily wage basis w.e.f. 1986 till 1995. It is also an admitted fact that the present industrial dispute has been raised by him after more than 19 years. From the perusal of order dated 30.10.2018, passed by the Labour Commissioner, it is also established on record that the Labour Commissioner has also declined to refer the matter to this Court for adjudication.

25. For the foregoing reasons and having regard to the law laid down (supra) vis-à-vis my aforesaid discussion, the present application filed by the petitioner directly before this Court after the expiry of 24 years from the date of his termination, the same is not maintainable and as such the petitioner is not entitled to any relief from this Court/Tribunal. Accordingly, both these issues are answered against the petitioner and in favour of respondent.

RELIEF

26. As a sequel to my above discussion and findings on issues no.1 & 2, the claim of the petitioner **fails and merits of the instantaneous application deserves dismissal and the same is hereby ordered to be dismissed. The petitioner is not entitled to any relief as prayed by him. The parties to the lis are left behind to bear their costs respectively.**

27. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 2nd day of Jan., 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Application Number : 29 of 2021

Instituted on : 11-12-2019

Decided on : 02-01-2023

Lal Chand s/o Shri Paras Ram, r/o Village Bhuila Padyach, P.O. Saryanj, Tehsil Arki,
District Solan H.P. . *Petitioner.*

VERSUS

Executive Engineer, Electrical Division HPSEBL, Arki, District Solan, H.P. . *Respondent.*

Application under section 2(A) 2 of Industrial Disputes (Amendment) Act, 2010

For the Petitioner : Shri Raj Kumar, Advocate

For the Respondent : Shri Surinder Sharma, Adv.

ORDER/AWARD

This is an application on behalf of the claimant in terms of section 2(A) 2 of the Industrial Disputes Act (Amendment) Act, 2010 (hereinafter to be referred as the Act) seeking reinstatement along-with all consequential benefits including back-wages, seniority, continuity and regularization.

2. Key facts necessary for the disposal of the present petition as alleged by the petitioner in the application are thus that he was initially engaged on daily wage basis w.e.f. 1984 and worked till 1995. The services of the petitioner were terminated without assigning reasons and without serving any prior notice as required under section 25-F of the Act and without paying compensation. The respondent had engaged fresh persons and retained many juniors after the illegal termination of the petitioner. The petitioner had completed 240 working days in a calendar year. There is violation of sections 25-B, 25-F, 25-G and 25-H of the Act.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

“It is therefore respectfully prayed that directions may kindly be issued to the respondents to re-instate the claimant in service along-with all consequential benefits/relief(s) of back-wages, seniority, continuity and regularization of service and the cost of the petition may kindly be awarded in favour of the claimant in the interest of law and justice”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia raising preliminary objections of no cause of action, the petitioner has not come to the Court with clean hands and there is no industrial dispute in between the petitioner and the respondent.

5. On merits, it is submitted that the petitioner was engaged as casual labourer by the respondent from 21.7.1985 to 20.7.1995. The petitioner had left the job on his own sweet will. The petitioner had not completed 240 days in any calendar year. The services of the petitioner have never been terminated by the respondent who himself had abandoned the job and never turned back, hence, the violation of the provisions of section 25-F of the Act, does not arise at all.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 07.04.2022, as under:

1. Whether the termination of the services of the petitioner by the respondent without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? If so what relief of service benefits the petitioner is entitled to?
..OPP.

2. Whether the claim petition filed by the petitioner is neither competent nor maintainable in the present form, as alleged?
..OPR.

3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No.1	Decided accordingly
Issue No.2	Yes
Relief.	Application dismissed as per operative part of award/order

REASONS FOR FINDINGS

ISSUES NO.1 & 2

11. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. In order to substantiate its case, the petitioner has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition. He also tendered into evidence demand notice (PW-1/B) and proceedings (PW-1/C).

13. In cross-examination, on behalf of respondent, he denied that he had abandoned the job in the year 1993. He further denied that he had not completed 240 days in a calendar year. He admitted that he filed a case before the Hon'ble High Court which was withdrawn. He further admitted that he filed representation before the respondent which was considered and rejected.

14. In order to rebut, the respondent has examined Shri Joginder Singh, Sr. Assistant of respondent as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence mandays chart (R-1), copy of order dated 30.10.2018 (R-2), copy of order dated 3.4.2013 (R-3), copy of judgments dated 10.10.2012 and 01.03.2011 Mark RX-1 and Mark RX-2 respectively.

15. In cross-examination, on behalf of petitioner he denied that the respondent had engaged new hands for work. He further denied that s/o Shri Tulsi Ram, Kirpa Ram are still working with the respondent. He denied that the petitioner had completed 240 days in a calendar year. He also denied that the services of the petitioner were terminated without issuing any notice and paying any retrenchment compensation.

16. This is the entire oral as well as documentary evidence adduced from the side of the parties.

17. Shri Rajkumar, Ld. Counsel for the petitioner has contended with all vehemence that the time period from the date of raising of demand notice has exceeded the prescribed period. He further contended that the services of the petitioner were terminated without issuing any show cause notice, chargesheet and without paying any retrenchment compensation, hence, the illegal termination of the petitioner amounts to "retrenchment". It is therefore prayed that the petitioner is entitled to be reinstated in service along-with all consequential service benefits including back-wages. He has also placed on record the copy of award dated 17.3.2017 passed by this Tribunal in **reference no. 1 of 2016 and judgment passed by the Hon'ble High 4696 of 2009 decided on 1.3.2011 titled as Mansa Ram vs. State of HP and Ors.**

18. *Per contra*, Shri Surender Sharma, Ld. Counsel for the respondent urged that the present petition which has been filed by the petitioner directly before this Court is not maintainable. He further argued that the services of the petitioner were never terminated by the respondent. The petitioner himself abandoned the job without any reason. He also argued that the petitioner had not completed 240 days in any calendar year. He prayed for the dismissal of the claim petition.

19. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Thus, from a careful examination of the case record, it is manifestly clear on record that the present application has been filed directly before this Tribunal by the petition by invoking section 2-A of the Act. The provisions of section 2-A are reproduced as under:

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.—

(1) Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that

workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

- (2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.**
- (3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1)."**

21. Verily, it is pertinent to point out here that the provisions of sub section 2 of section 2-A is a non-obstante clause. Section 2-A of the Act enables the individual workman to raise a dispute connected with or arising out of his discharge, dismissal, retrenchment or otherwise termination of his services by his employer and by legal fiction it would constitute "Industrial Dispute". No other type of dispute regarding an individual workman is contemplated by Section 2A. After the enactment of Section 2A, it is not necessary that a dispute relating to the discharge, dismissal, retrenchment or otherwise termination of service of a workman must be sponsored by a trade union or a substantial number of workman. In other words, even if it is not sponsored by a trade union or a substantial number of workman, such a dispute will be deemed to be an industrial dispute. The said amendment in the Act came into effect on and from 15th September, 2010. In the absence of any specific provision to the contrary Act 24 of 2010 is to be held operative prospectively. The effect of amendment is that any workman who has been discharged, dismissed, retrenched or terminated as specified in sub-section (1) of Section 2A may make an application directly to the Labour Court or Tribunal for adjudication of his individual dispute after the expiry of 45 days from the date he has made an application to the conciliation officer of the appropriate Government for conciliation of the dispute. Sub-Section (3) of Section 2A lays down the time limit for making such application to Labour Court or Tribunal. It provides that such application to the Labour Court or Tribunal for adjudication of the dispute shall be made before the expiry of three years from the date of discharge, dismissal and retrenchment or otherwise termination of service as specified in sub- Section(1). A bare reading of above provision would indicate that a dispute covered under sub-Section(1) can be agitated or questioned by a workman by making an application directly to the Labour Court or Tribunal for adjudication of such dispute and such application should be filed before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service. In other words, the right conferred under Section 2A would lapse immediately preceding the date of expiry of three years of the date of dismissal, discharge etc. Sub-Section (3) of Section 2A would operate independently. The right available to the workman under Section 2A is not withstanding anything contained in Section 10 of the ID Act. Thus, question which would arise for consideration in the instant case is; whether dispute raised beyond three years from the date of discharge, dismissal or retrenchment can be entertained by the Labour Court or Tribunal by condoning the delay if any in raising the dispute or filing a claim petition. Prior to incorporation of Section 2A, a workman had to necessarily depend upon the reference under Section 10(1)(c) of the Act. The incorporation of Section 2A enabled the workman

to approach the Labour Court or Tribunal directly and prevented the mischief of unreasonable delay occasioning on account of reference not being referred to by the appropriate Government under Section 10(1)(c) of the Act. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1). Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2-A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2-A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned even by taking recourse to Section 5 of the Limitation Act, 1963, which has no application to the provisions of Industrial Disputes Act, 1947.

22. It is well recognized principle of law that if an act is required to be performed within a specified time, the same would primarily be mandatory. The Hon'ble Apex Court in the case of **Naziruddin VS Sitaram Agarwal reported in AIR 2003 SCW 908**, has held as under:

"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."

23. Thus, in the background of the dicta of the Apex Court in Naziruddin's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words 'at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made. The Hon'ble High Court of Karnataka has observed in **Writ Petition No.27510/2015 case titled as M/S ITC Infotech India Ltd., VS Mr. Venkataramana Uppada** that the Labour Court cannot entertain a claim petition filed under Section 2A(2) of the I.D. Act after three years from the date of discharge, dismissal, retrenchment or termination and Labour Court was not justified in condoning the delay of 730 days in filing the claim petition.

24. In the instant case, admittedly, no steps were taken by the petitioner prior to the expiry of three years from the date of such termination to make statutory provision enabling him to approach the Court without the requirement of reference petition to be received from the appropriate government in case of dispute under section 2-A of the Act. Admittedly, the petitioner has claiming that he had worked with the respondent on daily wage basis w.e.f. 1986 till 1995. It is also an admitted fact that the present industrial dispute has been raised by him after more than 19

years. From the perusal of order dated 30.10.2018, passed by the Labour Commissioner, it is also established on record that the Labour Commissioner has also declined to refer the matter to this Court for adjudication.

25. For the foregoing reasons and having regard to the law laid down (supra) *vis-à-vis* my aforesaid discussion, the present application filed by the petitioner directly before this Court after the expiry of 24 years from the date of his termination, the same is not maintainable and as such the petitioner is not entitled to any relief from this Court/Tribunal. Accordingly, both these issues are answered against the petitioner and in favour of respondent.

RELIEF

26. As a sequel to my above discussion and findings on issues no.1 & 2, the claim of the petitioner **fails and merits of the instantaneous application deserves dismissal and the same is hereby ordered to be dismissed. The petitioner is not entitled to any relief as prayed by him. The parties to the lis are left behind to bear their costs respectively.**

27. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 2nd day of Jan., 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, SHIMLA

Application Number : 30 of 2021

Instituted on : 11-12-2019

Decided on : 02-01-2023

Mansa Ram s/o Shri Durga Ram, r/o Village Bhuila Kashmiri, P.O. Saryanj, Tehsil Arki,
District Solan H.P. . *Petitioner.*

VERSUS

Executive Engineer, Electrical Division HPSEBL, Arki, District Solan, HP. . *Respondent.*

Application under section 2(A) 2 of Industrial Disputes (Amendment) Act, 2010

For the Petitioner : Shri Raj Kumar, Advocate.

For the Respondent

: Shri Surinder Sharma, Adv.

ORDER/AWARD

This is an application on behalf of the claimant in terms of section 2(A) 2 of the Industrial Disputes Act (Amendment) Act, 2010 (hereinafter to be referred as the Act) seeking reinstatement along-with all consequential benefits including back-wages, seniority, continuity and regularization.

2. Key facts necessary for the disposal of the present petition as alleged by the petitioner in the application are thus that he was initially engaged on daily wage basis w.e.f. 1986 and worked till 1985. The services of the petitioner were terminated without assigning reasons and without serving any prior notice as required under section 25-F of the Act and without paying compensation. The respondent had engaged fresh persons and retained many juniors after the illegal termination of the petitioner. The petitioner had completed 240 working days in a calendar year. There is violation of sections 25-B, 25-F, 25-G and 25-H of the Act.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

“It is therefore respectfully prayed that directions may kindly be issued to the respondents to re-instate the claimant in service along-with all consequential benefits/relief(s) of back-wages, seniority, continuity and regularization of service and the cost of the petition may kindly be awarded in favour of the claimant in the interest of law and justice”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia raising preliminary objections of no cause of action, the petitioner has not come to the Court with clean hands and there is no industrial dispute in between the petitioner and the respondent.

5. On merits, it is submitted that the petitioner was engaged as casual labourer by the respondent from 21.07.1984 to 20.07.1989 and thereafter he had worked with the respondent from 22.01.1993 to 30.04.1993. The petitioner had left the job on his own sweet will. The petitioner had not completed 240 days in any calendar year. The services of the petitioner have never been terminated by the respondent who himself had abandoned the job and never turned back, hence, the violation of the provisions of section 25-F of the Act, does not arise at all.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 07.04.2022, as under:

1. Whether the termination of the services of the petitioner by the respondent without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? If so what relief of service benefits the petitioner is entitled to?
..OPP.
2. Whether the claim petition filed by the petitioner is neither competent nor maintainable in the present form, as alleged?
..OPR.
3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No.1	Decided accordingly
Issue No.2	Yes
Relief	Application dismissed as per operative part of award/order

REASONS FOR FINDINGS

ISSUES NO.1 & 2

11. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. In order to substantiate its case, the petitioner has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition. He also tendered into evidence demand notice (PW-1/B).

13. In cross-examination, on behalf of respondent, he denied that he had abandoned the job in the year 1993. He further denied that he had not completed 240 days in a calendar year. He admitted that he filed a case before the Hon'ble High Court which was withdrawn. He further admitted that he filed representation before the respondent which was considered and rejected.

14. In order to rebut, the respondent has examined Shri Joginder Singh, Sr. Assistant of respondent as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence mandays chart (R-1), copy of order dated 30.10.2018 (R-2), copy of order dated 3.4.2013 (R-3), copy of judgments dated 10.10.2012 and 01.03.2011 Mark RX-1 and Mark RX-2 respectively.

15. In cross-examination, on behalf of petitioner he denied that the respondent had engaged new hands for work. He further denied that s/o Shri Tulsi Ram, Kirpa Ram are still working with the respondent. He denied that the petitioner had completed 240 days in a calendar year. He also denied that the services of the petitioner were terminated without issuing any notice and paying any retrenchment compensation.

16. This is the entire oral as well as documentary evidence adduced from the side of the parties.

17. Shri Rajkumar, Ld. Counsel for the petitioner has contended with all vehemence that the time period from the date of raising of demand notice has exceeded the prescribed period. He further contended that the services of the petitioner were terminated without issuing any show cause notice, chargesheet and without paying any retrenchment compensation, hence, the illegal

termination of the petitioner amounts to “retrenchment”. It is therefore prayed that the petitioner is entitled to be reinstated in service along-with all consequential service benefits including back-wages. He has also placed on record the copy of award dated 17.3.2017 passed by this Tribunal in **reference no. 1 of 2016 and judgment passed by the Hon’ble High 4696 of 2009 decided on 1.3.2011 titled as Mansa Ram vs. State of HP and Ors.**

18. *Per contra*, Shri Surender Sharma, Ld. Counsel for the respondent urged that the present petition which has been filed by the petitioner directly before this Court is not maintainable. He further argued that the services of the petitioner were never terminated by the respondent. The petitioner himself abandoned the job without any reason. He also argued that the petitioner had not completed 240 days in any calendar year. He prayed for the dismissal of the claim petition.

19. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Thus, from a careful examination of the case record, it is manifestly clear on record that the present application has been filed directly before this Tribunal by the petition by invoking section 2-A of the Act. The provisions of section 2-A are reproduced as under:

“2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.—

- (1) Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.**
- (2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.**
- (3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).”**

21. Verily, it is pertinent to point out here that the provisions of sub section 2 of section 2-A is a non-obstante clause. Section 2-A of the Act enables the individual workman to raise a dispute connected with or arising out of his discharge, dismissal, retrenchment or otherwise termination of his services by his employer and by legal fiction it would constitute "Industrial Dispute". No other type of dispute regarding an individual workman is contemplated by Section 2A. After the enactment of Section 2A, it is not necessary that a dispute relating to the discharge,

dismissal, retrenchment or otherwise termination of service of a workman must be sponsored by a trade union or a substantial number of workman. In other words, even if it is not sponsored by a trade union or a substantial number of workman, such a dispute will be deemed to be an industrial dispute. The said amendment in the Act came into effect on and from 15th September, 2010. In the absence of any specific provision to the contrary Act 24 of 2010 is to be held operative prospectively. The effect of amendment is that any workman who has been discharged, dismissed, retrenched or terminated as specified in sub-section (1) of Section 2A may make an application directly to the Labour Court or Tribunal for adjudication of his individual dispute after the expiry of 45 days from the date he has made an application to the conciliation officer of the appropriate Government for conciliation of the dispute. Sub-Section (3) of Section 2A lays down the time limit for making such application to Labour Court or Tribunal. It provides that such application to the Labour Court or Tribunal for adjudication of the dispute shall be made before the expiry of three years from the date of discharge, dismissal and retrenchment or otherwise termination of service as specified in sub- Section(1). A bare reading of above provision would indicate that a dispute covered under sub-Section(1) can be agitated or questioned by a workman by making an application directly to the Labour Court or Tribunal for adjudication of such dispute and such application should be filed before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service. In other words, the right conferred under Section 2A would lapse immediately preceding the date of expiry of three years of the date of dismissal, discharge etc. Sub-Section (3) of Section 2A would operate independently. The right available to the workman under Section 2A is not withstanding anything contained in Section 10 of the ID Act. Thus, question which would arise for consideration in the instant case is; whether dispute raised beyond three years from the date of discharge, dismissal or retrenchment can be entertained by the Labour Court or Tribunal by condoning the delay if any in raising the dispute or filing a claim petition. Prior to incorporation of Section 2A, a workman had to necessarily depend upon the reference under Section 10(1)(c) of the Act. The incorporation of Section 2A enabled the workman to approach the Labour Court or Tribunal directly and prevented the mischief of unreasonable delay occasioning on account of reference not being referred to by the appropriate Government under Section 10(1)(c) of the Act. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1). Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2-A does not appear to have a bearing to the provisions of sub- Section (2) of Section 2-A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned even by taking recourse to Section 5 of the Limitation Act, 1963, which has no application to the provisions of Industrial Disputes Act, 1947.

22. It is well recognized principle of law that if an act is required to be performed within a specified time, the same would primarily be mandatory. The Hon'ble Apex Court in the case of **Naziruddin VS Sitaram Agarwal reported in AIR 2003 SCW 908**, has held as under:

"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."

23. Thus, in the background of the dicta of the Apex Court in Naziruddin's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words 'at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made. The Hon'ble High Court of Karnatka has observed in **Writ Petition No.27510/2015 case titled as M/S ITC Infotech India Ltd., VS Mr. Venkataramana Uppada** that the Labour Court cannot entertain a claim petition filed under Section 2A(2) of the I.D. Act after three years from the date of discharge, dismissal, retrenchment or termination and Labour Court was not justified in condoning the delay of 730 days in filing the claim petition.

24. In the instant case, admittedly, no steps were taken by the petitioner prior to the expiry of three years from the date of such termination to make statutory provision enabling him to approach the Court without the requirement of reference petition to be received from the appropriate government in case of dispute under section 2-A of the Act. Admittedly, the petitioner has claiming that he had worked with the respondent on daily wage basis w.e.f. 1986 till 1995. It is also an admitted fact that the present industrial dispute has been raised by him after more than 19 years. From the perusal of order dated 30.10.2018, passed by the Labour Commissioner, it is also established on record that the Labour Commissioner has also declined to refer the matter to this Court for adjudication.

25. For the foregoing reasons and having regard to the law laid down (supra) *vis-à-vis* my aforesaid discussion, the present application filed by the petitioner directly before this Court after the expiry of 24 years from the date of his termination, the same is not maintainable and as such the petitioner is not entitled to any relief from this Court/Tribunal. Accordingly, both these issues are answered against the petitioner and in favour of respondent.

RELIEF

26. As a sequel to my above discussion and findings on issues no.1 & 2, the claim of the petitioner **fails and merits of the instantaneous application deserves dismissal and the same is hereby ordered to be dismissed. The petitioner is not entitled to any relief as prayed by him. The parties to the lis are left behind to bear their costs respectively.**

27. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 2nd day of Jan., 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Application Number : 31 of 2021

Instituted on : 11-12-2019

Decided on : 02-01-2023

Ghunghriya Ram s/o Shri Shehaj Ram, r/o Village Chandpur, P.O. Bhakshlag, Tehsil Arki,
District Solan H.P. . *Petitioner.*

VERSUS

1. Executive Engineer, Electrical Division HPSEBL, Arki, District Solan, H.P.
2. SDO Electrical Sub Division HPSEBL, Darla, Division Arki, District Solan, H.P.
. *Respondents.*

Application under section 2(A) 2 of Industrial Disputes (Amendment) Act, 2010

For the Petitioner : Shri Raj Kumar, Advocate

For the Respondents : Shri Surinder Sharma, Adv.

ORDER/AWARD

This is an application on behalf of the claimant in terms of section 2(A) 2 of the Industrial Disputes Act (Amendment) Act, 2010 (hereinafter to be referred as the Act) seeking reinstatement along-with all consequential benefits including back-wages, seniority, continuity and regularization.

2. Key facts necessary for the disposal of the present petition as alleged by the petitioner in the application are thus that he was initially engaged on daily wage basis w.e.f. 1993 and worked till 1994. The services of the petitioner were terminated without assigning reasons and without serving any prior notice as required under section 25-F of the Act and without paying compensation. The respondent had engaged fresh persons and retained many juniors after the illegal termination of the petitioner. The petitioner had completed 240 working days in a calendar year. There is violation of sections 25-B, 25-F, 25-G and 25-H of the Act.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

“It is therefore respectfully prayed that directions may kindly be issued to the respondents to re-instate the claimant in service along-with all consequential benefits/relief(s) of back-wages, seniority, continuity and regularization of service and the cost of the petition may kindly be awarded in favour of the claimant in the interest of law and justice”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia raising preliminary objections of no cause of action, the petitioner has not come to the Court with clean hands and there is no industrial dispute in between the petitioner and the respondent.

5. On merits, it is submitted that the petitioner was engaged as casual labourer by the respondent from 21.8.1993 to 20.10.1994. The petitioner had left the job on his own sweet will.

The petitioner had not completed 240 days in any calendar year. The services of the petitioner have never been terminated by the respondent who himself had abandoned the job and never turned back, hence, the violation of the provisions of section 25-F of the Act, does not arise at all.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 07.04.2022, as under:

1. Whether the termination of the services of the petitioner by the respondent without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? If so what relief of service benefits the petitioner is entitled to? . . . *OPP.*
2. Whether the claim petition filed by the petitioner is neither competent nor maintainable in the present form, as alleged? . . . *OPR.*
3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No.1	Decided accordingly
Issue No. 2	Yes
Relief	Application dismissed as per operative part of award/order

REASONS FOR FINDINGS

ISSUES NO.1 & 2

11. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. In order to substantiate its case, the petitioner has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition. He also tendered into evidence demand notice (PW-1/B).

13. In cross-examination, on behalf of respondent, he denied that he had abandoned the job in the year 1993. He further denied that he had not completed 240 days in a calendar year. He admitted that he filed a case before the Hon'ble High Court which was withdrawn. He further admitted that he filed representation before the respondent which was considered and rejected.

14. In order to rebut, the respondent has examined Shri Joginder Singh, Sr. Assistant of respondent as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he

reiterated almost all the averments as made in the reply. He also tendered in evidence mandays chart (R-1), copy of order dated 30.10.2018 (R-2), copy of order dated 3.4.2013 (R-3), copy of judgments dated 10.10.2012 and 01.03.2011 Mark RX-1 and Mark RX-2 respectively.

15. In cross-examination, on behalf of petitioner he denied that the respondent had engaged new hands for work. He further denied that S/Shri Tulsi Ram, Kirpa Ram are still working with the respondent. He denied that the petitioner had completed 240 days in a calendar year. He also denied that the services of the petitioner were terminated without issuing any notice and paying any retrenchment compensation.

16. This is the entire oral as well as documentary evidence adduced from the side of the parties.

17. Shri Rajkumar, Ld. Counsel for the petitioner has contended with all vehemence that the time period from the date of raising of demand notice has exceeded the prescribed period. He further contended that the services of the petitioner were terminated without issuing any show cause notice, chargesheet and without paying any retrenchment compensation, hence, the illegal termination of the petitioner amounts to „retrenchment“. It is therefore prayed that the petitioner is entitled to be reinstated in service along-with all consequential service benefits including back-wages. He has also placed on record the copy of award dated 17.3.2017 passed by this Tribunal in **reference no. 1 of 2016 and judgment passed by the Hon'ble High 4696 of 2009 decided on 1.3.2011 titled as Mansa Ram vs. State of HP and Ors.**

18. *Per contra*, Shri Surender Sharma, Ld. Counsel for the respondent urged that the present petition which has been filed by the petitioner directly before this Court is not maintainable. He further argued that the services of the petitioner were never terminated by the respondent. The petitioner himself abandoned the job without any reason. He also argued that the petitioner had not completed 240 days in any calendar year. He prayed for the dismissal of the claim petition.

19. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Thus, from a careful examination of the case record, it is manifestly clear on record that the present application has been filed directly before this Tribunal by the petition by invoking section 2-A of the Act. The provisions of section 2-A are reproduced as under:

“2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.—

- (1) Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.**
- (2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and**

jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

- (3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1)."**

21. Verily, it is pertinent to point out here that the provisions of sub section 2 of section 2-A is a non-obstante clause. Section 2-A of the Act enables the individual workman to raise a dispute connected with or arising out of his discharge, dismissal, retrenchment or otherwise termination of his services by his employer and by legal fiction it would constitute "Industrial Dispute". No other type of dispute regarding an individual workman is contemplated by Section 2A. After the enactment of Section 2A, it is not necessary that a dispute relating to the discharge, dismissal, retrenchment or otherwise termination of service of a workman must be sponsored by a trade union or a substantial number of workman. In other words, even if it is not sponsored by a trade union or a substantial number of workman, such a dispute will be deemed to be an industrial dispute. The said amendment in the Act came into effect on and from 15th September, 2010. In the absence of any specific provision to the contrary Act 24 of 2010 is to be held operative prospectively. The effect of amendment is that any workman who has been discharged, dismissed, retrenched or terminated as specified in sub-section (1) of Section 2A may make an application directly to the Labour Court or Tribunal for adjudication of his individual dispute after the expiry of 45 days from the date he has made an application to the conciliation officer of the appropriate Government for conciliation of the dispute. Sub-Section (3) of Section 2A lays down the time limit for making such application to Labour Court or Tribunal. It provides that such application to the Labour Court or Tribunal for adjudication of the dispute shall be made before the expiry of three years from the date of discharge, dismissal and retrenchment or otherwise termination of service as specified in sub- Section(1). A bare reading of above provision would indicate that a dispute covered under sub-Section(1) can be agitated or questioned by a workman by making an application directly to the Labour Court or Tribunal for adjudication of such dispute and such application should be filed before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service. In other words, the right conferred under Section 2A would lapse immediately preceding the date of expiry of three years of the date of dismissal, discharge etc. Sub-Section (3) of Section 2A would operate independently. The right available to the workman under Section 2A is not withstanding anything contained in Section 10 of the ID Act. Thus, question which would arise for consideration in the instant case is; whether dispute raised beyond three years from the date of discharge, dismissal or retrenchment can be entertained by the Labour Court or Tribunal by condoning the delay if any in raising the dispute or filing a claim petition. Prior to incorporation of Section 2A, a workman had to necessarily depend upon the reference under Section 10(1)(c) of the Act. The incorporation of Section 2A enabled the workman to approach the Labour Court or Tribunal directly and prevented the mischief of unreasonable delay occasioning on account of reference not being referred to by the appropriate Government under Section 10(1)(c) of the Act. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1). Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2-A does not appear to have a bearing to the provisions of sub- Section (2) of Section 2-A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being

mandatory, same cannot be condoned even by taking recourse to Section 5 of the Limitation Act, 1963, which has no application to the provisions of Industrial Disputes Act, 1947.

22. It is well recognized principle of law that if an act is required to be performed within a specified time, the same would primarily be mandatory. The Hon'ble Apex Court in the case of **Naziruddin VS Sitaram Agarwal reported in AIR 2003 SCW 908**, has held as under:

"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."

23. Thus, in the background of the dicta of the Apex Court in Naziruddin's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words 'at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made. The Hon'ble High Court of Karnataka has observed in **Writ Petition No.27510/2015 case titled as M/S ITC Infotech India Ltd., VS Mr. Venkataramana Uppada** that the Labour Court cannot entertain a claim petition filed under Section 2A(2) of the I.D. Act after three years from the date of discharge, dismissal, retrenchment or termination and Labour Court was not justified in condoning the delay of 730 days in filing the claim petition.

24. In the instant case, admittedly, no steps were taken by the petitioner prior to the expiry of three years from the date of such termination to make statutory provision enabling him to approach the Court without the requirement of reference petition to be received from the appropriate government in case of dispute under section 2-A of the Act. Admittedly, the petitioner has claiming that he had worked with the respondent on daily wage basis w.e.f. 1986 till 1995. It is also an admitted fact that the present industrial dispute has been raised by him after more than 19 years. From the perusal of order dated 30.10.2018, passed by the Labour Commissioner, it is also established on record that the Labour Commissioner has also declined to refer the matter to this Court for adjudication.

25. For the foregoing reasons and having regard to the law laid down (supra) vis-à-vis my aforesaid discussion, the present application filed by the petitioner directly before this Court after the expiry of 24 years from the date of his termination, the same is not maintainable and as such the petitioner is not entitled to any relief from this Court/Tribunal. Accordingly, both these issues are answered against the petitioner and in favour of respondent.

RELIEF

26. As a sequel to my above discussion and findings on issues no.1 & 2, the claim of the petitioner **fails and merits of the instaneous application deserves dismissal and the same is hereby ordered to be dismissed. The petitioner is not entitled to any relief as prayed by him. The parties to the lis are left behind to bear their costs respectively.**

27. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 2nd day of Jan., 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Application Number : 32 of 2021

Instituted on : 11-12-2019

Decided on : 02-01-2023

H.P. Charan Dass s/o Shri Budhi Ram, r/o Village Patta, P.O. Saryanj, Tehsil Arki, District Solan . *Petitioner.*

VERSUS

1. Executive Engineer, Electrical Division HPSEBL, Arki, District Solan, H.P.
2. SDO Electrical Sub Division HPSEBL, Darla, Division Arki, District Solan, H.P. . *Respondents.*

Application under section 2(A) 2 of Industrial Disputes (Amendment) Act, 2010

For the Petitioner : Shri Raj Kumar, Advocate

For the Respondents : Shri Surinder Sharma, Adv.

ORDER/AWARD

This is an application on behalf of the claimant in terms of section 2(A) 2 of the Industrial Disputes Act (Amendment) Act, 2010 (hereinafter to be referred as the Act) seeking reinstatement along-with all consequential benefits including back-wages, seniority, continuity and regularization.

2. Key facts necessary for the disposal of the present petition as alleged by the petitioner in the application are thus that he was initially engaged on daily wage basis w.e.f. 1987 and worked

till 1998. The services of the petitioner were terminated without assigning reasons and without serving any prior notice as required under section 25-F of the Act and without paying compensation. The respondent had engaged fresh persons and retained many juniors after the illegal termination of the petitioner. The petitioner had completed 240 working days in a calendar year. There is violation of sections 25-B, 25-F, 25-G and 25-H of the Act.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

“It is therefore respectfully prayed that directions may kindly be issued to the respondents to re-instate the claimant in service along-with all consequential benefits/relief(s) of back-wages, seniority, continuity and regularization of service and the cost of the petition may kindly be awarded in favour of the claimant in the interest of law and justice”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia raising preliminary objections of no cause of action, the petitioner has not come to the Court with clean hands and there is no industrial dispute in between the petitioner and the respondent.

5. On merits, it is submitted that the petitioner was engaged as casual labourer by the respondent from 21.11.1984 to 20.1.1986. The petitioner had left the job on his own sweet will. The petitioner had not completed 240 days in any calendar year. The services of the petitioner have never been terminated by the respondent who himself had abandoned the job and never turned back, hence, the violation of the provisions of section 25-F of the Act, does not arise at all.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 07.04.2022, as under:

1. Whether the termination of the services of the petitioner by the respondent without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? If so what relief of service benefits the petitioner is entitled to?
..OPP.

2. Whether the claim petition filed by the petitioner is neither competent nor maintainable in the present form, as alleged?
..OPR.

3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No.1 Decided accordingly

Issue No.2 Yes

Relief. Application dismissed as per operative part of award/order

REASONS FOR FINDINGS

ISSUES NO.1 & 2.

11. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. In order to substantiate its case, the petitioner has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition. He also tendered into evidence demand notice (PW-1/B).

13. In cross-examination, on behalf of respondent, he denied that he had abandoned the job in the year 1993. He further denied that he had not completed 240 days in a calendar year. He admitted that he filed a case before the Hon'ble High Court which was withdrawn. He further admitted that he filed representation before the respondent which was considered and rejected.

14. In order to rebut, the respondent has examined Shri Joginder Singh, Sr. Assistant of respondent as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence mandays chart (R-1), copy of order dated 30.10.2018 (R-2), copy of order dated 3.4.2013 (R-3), copy of judgments dated 10.10.2012 and 01.03.2011 Mark RX-1 and Mark RX-2 respectively.

15. In cross-examination, on behalf of petitioner he denied that the respondent had engaged new hands for work. He further denied that S/Shri Tulsi Ram, Kirpa Ram are still working with the respondent. He denied that the petitioner had completed 240 days in a calendar year. He also denied that the services of the petitioner were terminated without issuing any notice and paying any retrenchment compensation.

16. This is the entire oral as well as documentary evidence adduced from the side of the parties.

17. Shri Rajkumar, Ld. Counsel for the petitioner has contended with all vehemence that the time period from the date of raising of demand notice has exceeded the prescribed period. He further contended that the services of the petitioner were terminated without issuing any show cause notice, chargesheet and without paying any retrenchment compensation, hence, the illegal termination of the petitioner amounts to „retrenchment“. It is therefore prayed that the petitioner is entitled to be reinstated in service along-with all consequential service benefits including back-wages. He has also placed on record the copy of award dated 17.3.2017 passed by this Tribunal in **reference no. 1 of 2016 and judgment passed by the Hon'ble High 4696 of 2009 decided on 1.3.2011 titled as Mansa Ram vs. State of HP and Ors.**

18. *Per contra*, Shri Surender Sharma, Ld. Counsel for the respondent urged that the present petition which has been filed by the petitioner directly before this Court is not maintainable. He further argued that the services of the petitioner were never terminated by the respondent. The petitioner himself abandoned the job without any reason. He also argued that the petitioner had not completed 240 days in any calendar year. He prayed for the dismissal of the claim petition.

19. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Thus, from a careful examination of the case record, it is manifestly clear on record that the present application has been filed directly before this Tribunal by the petition by invoking section 2-A of the Act. The provisions of section 2-A are reproduced as under:

“2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.—

- (1) Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.**
- (2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.**
- (3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).”**

21. Verily, it is pertinent to point out here that the provisions of sub section 2 of section 2-A is a non-obstante clause. Section 2-A of the Act enables the individual workman to raise a dispute connected with or arising out of his discharge, dismissal, retrenchment or otherwise termination of his services by his employer and by legal fiction it would constitute "Industrial Dispute". No other type of dispute regarding an individual workman is contemplated by Section 2A. After the enactment of Section 2A, it is not necessary that a dispute relating to the discharge, dismissal, retrenchment or otherwise termination of service of a workman must be sponsored by a trade union or a substantial number of workman. In other words, even if it is not sponsored by a trade union or a substantial number of workman, such a dispute will be deemed to be an industrial dispute. The said amendment in the Act came into effect on and from 15th September, 2010. In the absence of any specific provision to the contrary Act 24 of 2010 is to be held operative prospectively. The effect of amendment is that any workman who has been discharged, dismissed, retrenched or terminated as specified in sub-section (1) of Section 2A may make an application directly to the Labour Court or Tribunal for adjudication of his individual dispute after the expiry of 45 days from the date he has made an application to the conciliation officer of the appropriate Government for conciliation of the dispute. Sub-Section (3) of Section 2A lays down the time limit for making such application to Labour Court or Tribunal. It provides that such application to the Labour Court or Tribunal for adjudication of the dispute shall be made before the expiry of three years from the date of discharge, dismissal and retrenchment or otherwise termination of service as specified in sub- Section(1). A bare reading of above provision would indicate that a dispute covered under sub-Section(1) can be agitated or questioned by a workman by making an application directly to the Labour Court or Tribunal for adjudication of such dispute and such application should be filed before the expiry of three years from the date of discharge, dismissal,

retrenchment or otherwise termination of service. In other words, the right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc. Sub-Section (3) of Section 2A would operate independently. The right available to the workman under Section 2A is not withstanding anything contained in Section 10 of the ID Act. Thus, question which would arise for consideration in the instant case is; whether dispute raised beyond three years from the date of discharge, dismissal or retrenchment can be entertained by the Labour Court or Tribunal by condoning the delay if any in raising the dispute or filing a claim petition. Prior to incorporation of Section 2A, a workman had to necessarily depend upon the reference under Section 10(1)(c) of the Act. The incorporation of Section 2A enabled the workman to approach the Labour Court or Tribunal directly and prevented the mischief of unreasonable delay occasioning on account of reference not being referred to by the appropriate Government under Section 10(1)(c) of the Act. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1). Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2-A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2-A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned even by taking recourse to Section 5 of the Limitation Act, 1963, which has no application to the provisions of Industrial Disputes Act, 1947.

22. It is well recognized principle of law that if an act is required to be performed within a specified time, the same would primarily be mandatory. The Hon'ble Apex Court in the case of **Naziruddin VS Sitaram Agarwal reported in AIR 2003 SCW 908**, has held as under:

"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."

23. Thus, in the background of the dicta of the Apex Court in Naziruddin's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words 'at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made. The Hon'ble High Court of Karnataka has observed in **Writ Petition No.27510/2015 case titled as M/S ITC Infotech India Ltd., VS Mr. Venkataramana Uppada** that the Labour Court cannot entertain a claim petition filed under Section 2A(2) of the I.D. Act after three years from the date of discharge, dismissal,

retrenchment or termination and Labour Court was not justified in condoning the delay of 730 days in filing the claim petition.

24. In the instant case, admittedly, no steps were taken by the petitioner prior to the expiry of three years from the date of such termination to make statutory provision enabling him to approach the Court without the requirement of reference petition to be received from the appropriate government in case of dispute under section 2-A of the Act. Admittedly, the petitioner has claiming that he had worked with the respondent on daily wage basis w.e.f. 1986 till 1995. It is also an admitted fact that the present industrial dispute has been raised by him after more than 19 years. From the perusal of order dated 30.10.2018, passed by the Labour Commissioner, it is also established on record that the Labour Commissioner has also declined to refer the matter to this Court for adjudication.

25. For the foregoing reasons and having regard to the law laid down (supra) *vis-à-vis* my aforesaid discussion, the present application filed by the petitioner directly before this Court after the expiry of 24 years from the date of his termination, the same is not maintainable and as such the petitioner is not entitled to any relief from this Court/Tribunal. Accordingly, both these issues are answered against the petitioner and in favour of respondent.

RELIEF

26. As a sequel to my above discussion and findings on issues no.1 & 2, the claim of the petitioner **fails and merits of the instantaneous application deserves dismissal and the same is hereby ordered to be dismissed. The petitioner is not entitled to any relief as prayed by him. The parties to the lis are left behind to bear their costs respectively.**

27. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 2nd day of Jan., 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Application Number : 33 of 2021

Instituted on : 11-12-2019

Decided on : 02-01-2023

Neem Chand s/o Shri Sehaj Ram, r/o Village Chandpur, P.O. Bakhalang, Tehsil Arki,
District Solan H.P.*Petitioner.*

VERSUS

Executive Engineer, Electrical Division HPSEBL, Arki, District Solan, H.P. . . *Respondent*.

Application under section 2(A) 2 of Industrial Disputes (Amendment) Act, 2010

For the Petitioner : Shri Raj Kumar, Advocate

For the Respondent : Shri Surinder Sharma, Adv.

ORDER/AWAD

This is an application on behalf of the claimant in terms of section 2(A) 2 of the Industrial Disputes Act (Amendment) Act, 2010 (hereinafter to be referred as the Act) seeking reinstatement along-with all consequential benefits including back-wages, seniority, continuity and regularization.

2. Key facts necessary for the disposal of the present petition as alleged by the petitioner in the application are thus that he was initially engaged on daily wage basis w.e.f. 1993 and worked till 1995. The services of the petitioner were terminated without assigning reasons and without serving any prior notice as required under section 25-F of the Act and without paying compensation. The respondent had engaged fresh persons and retained many juniors after the illegal termination of the petitioner. The petitioner had completed 240 working days in a calendar year. There is violation of sections 25-B, 25-F, 25-G and 25-H of the Act.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

“It is therefore respectfully prayed that directions may kindly be issued to the respondents to re-instate the claimant in service along-with all consequential benefits/relief(s) of back-wages, seniority, continuity and regularization of service and the cost of the petition may kindly be awarded in favour of the claimant in the interest of law and justice”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia raising preliminary objections of no cause of action, the petitioner has not come to the Court with clean hands and there is no industrial dispute in between the petitioner and the respondent.

5. On merits, it is submitted that the petitioner was engaged as casual labourer by the respondent from 21.07.1993 to 20.07.1994. The petitioner had left the job on his own sweet will. The petitioner had not completed 240 days in any calendar year. The services of the petitioner have never been terminated by the respondent who himself had abandoned the job and never turned back, hence, the violation of the provisions of section 25-F of the Act, does not arise at all.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 07.04.2022, as under:

1. Whether the termination of the services of the petitioner by the respondent without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? If so what relief of service benefits the petitioner is entitled to?

. . *OPP*.

2. Whether the claim petition filed by the petitioner is neither competent nor maintainable in the present form, as alleged? . . . *OPR*.

3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No.1	Decided accordingly
Issue No. 2	Yes
Relief	Application dismissed as per operative part of award/order

REASONS FOR FINDINGS

ISSUES NO.1 & 2

11. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. In order to substantiate its case, the petitioner has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition. He also tendered into evidence demand notice (PW-1/B) and proceedings (PW-1/C).

13. In cross-examination, on behalf of respondent, he denied that he had abandoned the job in the year 1993. He further denied that he had not completed 240 days in a calendar year. He admitted that he filed a case before the Hon'ble High Court which was withdrawn. He further admitted that he filed representation before the respondent which was considered and rejected.

14. In order to rebut, the respondent has examined Shri Joginder Singh, Sr. Assistant of respondent as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence mandays chart (R-1), copy of order dated 30.10.2018 (R-2), copy of order dated 3.4.2013 (R-3), copy of judgments dated 10.10.2012 and 01.03.2011 Mark RX-1 and Mark RX-2 respectively.

15. In cross-examination, on behalf of petitioner he denied that the respondent had engaged new hands for work. He further denied that s/o Shri Tulsi Ram, Kirpa Ram are still working with the respondent. He denied that the petitioner had completed 240 days in a calendar year. He also denied that the services of the petitioner were terminated without issuing any notice and paying any retrenchment compensation.

16. This is the entire oral as well as documentary evidence adduced from the side of the parties.

17. Shri Rajkumar, Ld. Counsel for the petitioner has contended with all vehemence that the time period from the date of raising of demand notice has exceeded the prescribed period. He further contended that the services of the petitioner were terminated without issuing any show cause notice, chargesheet and without paying any retrenchment compensation, hence, the illegal termination of the petitioner amounts to "retrenchment". It is therefore prayed that the petitioner is entitled to be reinstated in service along-with all consequential service benefits including back-wages. He has also placed on record the copy of award dated 17.3.2017 passed by this Tribunal in **reference no. 1 of 2016 and judgment passed by the Hon'ble High 4696 of 2009 decided on 1.3.2011 titled as Mansa Ram vs. State of HP and Ors.**

18. *Per contra*, Shri Surender Sharma, Ld. Counsel for the respondent urged that the present petition which has been filed by the petitioner directly before this Court is not maintainable. He further argued that the services of the petitioner were never terminated by the respondent. The petitioner himself abandoned the job without any reason. He also argued that the petitioner had not completed 240 days in any calendar year. He prayed for the dismissal of the claim petition.

19. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Thus, from a careful examination of the case record, it is manifestly clear on record that the present application has been filed directly before this Tribunal by the petition by invoking section 2-A of the Act. The provisions of section 2-A are reproduced as under:

"2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.—

- (1) Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.**
- (2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.**
- (3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1)."**

21. Verily, it is pertinent to point out here that the provisions of sub section 2 of section 2-A is a non-obstante clause. Section 2-A of the Act enables the individual workman to raise a dispute connected with or arising out of his discharge, dismissal, retrenchment or otherwise termination of his services by his employer and by legal fiction it would constitute "Industrial Dispute". No other type of dispute regarding an individual workman is contemplated by Section

2A. After the enactment of Section 2A, it is not necessary that a dispute relating to the discharge, dismissal, retrenchment or otherwise termination of service of a workman must be sponsored by a trade union or a substantial number of workman. In other words, even if it is not sponsored by a trade union or a substantial number of workman, such a dispute will be deemed to be an industrial dispute. The said amendment in the Act came into effect on and from 15th September, 2010. In the absence of any specific provision to the contrary Act 24 of 2010 is to be held operative prospectively. The effect of amendment is that any workman who has been discharged, dismissed, retrenched or terminated as specified in sub-section (1) of Section 2A may make an application directly to the Labour Court or Tribunal for adjudication of his individual dispute after the expiry of 45 days from the date he has made an application to the conciliation officer of the appropriate Government for conciliation of the dispute. Sub-Section (3) of Section 2A lays down the time limit for making such application to Labour Court or Tribunal. It provides that such application to the Labour Court or Tribunal for adjudication of the dispute shall be made before the expiry of three years from the date of discharge, dismissal and retrenchment or otherwise termination of service as specified in sub-Section(1). A bare reading of above provision would indicate that a dispute covered under sub-Section(1) can be agitated or questioned by a workman by making an application directly to the Labour Court or Tribunal for adjudication of such dispute and such application should be filed before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service. In other words, the right conferred under Section 2A would lapse immediately preceding the date of expiry of three years of the date of dismissal, discharge etc. Sub-Section (3) of Section 2A would operate independently. The right available to the workman under Section 2A is not withstanding anything contained in Section 10 of the ID Act. Thus, question which would arise for consideration in the instant case is; whether dispute raised beyond three years from the date of discharge, dismissal or retrenchment can be entertained by the Labour Court or Tribunal by condoning the delay if any in raising the dispute or filing a claim petition. Prior to incorporation of Section 2A, a workman had to necessarily depend upon the reference under Section 10(1)(c) of the Act. The incorporation of Section 2A enabled the workman to approach the Labour Court or Tribunal directly and prevented the mischief of unreasonable delay occasioning on account of reference not being referred to by the appropriate Government under Section 10(1)(c) of the Act. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1). Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2-A does not appear to have a bearing to the provisions of sub- Section (2) of Section 2-A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned even by taking recourse to Section 5 of the Limitation Act, 1963, which has no application to the provisions of Industrial Disputes Act, 1947.

22. It is well recognized principle of law that if an act is required to be performed within a specified time, the same would primarily be mandatory. The Hon'ble Apex Court in the case of **Naziruddin VS Sitaram Agarwal reported in AIR 2003 SCW 908**, has held as under:

"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."

23. Thus, in the background of the dicta of the Apex Court in Naziruddin's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words 'at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made. The Hon'ble High Court of Karnataka has observed in **Writ Petition No.27510/2015 case titled as M/S ITC Infotech India Ltd., VS Mr. Venkataramana Uppada** that the Labour Court cannot entertain a claim petition filed under Section 2A(2) of the I.D. Act after three years from the date of discharge, dismissal, retrenchment or termination and Labour Court was not justified in condoning the delay of 730 days in filing the claim petition.

24. In the instant case, admittedly, no steps were taken by the petitioner prior to the expiry of three years from the date of such termination to make statutory provision enabling him to approach the Court without the requirement of reference petition to be received from the appropriate government in case of dispute under section 2-A of the Act. Admittedly, the petitioner has claiming that he had worked with the respondent on daily wage basis w.e.f. 1986 till 1995. It is also an admitted fact that the present industrial dispute has been raised by him after more than 19 years. From the perusal of order dated 30.10.2018, passed by the Labour Commissioner, it is also established on record that the Labour Commissioner has also declined to refer the matter to this Court for adjudication.

25. For the foregoing reasons and having regard to the law laid down (supra) *vis-à-vis* my aforesaid discussion, the present application filed by the petitioner directly before this Court after the expiry of 24 years from the date of his termination, the same is not maintainable and as such the petitioner is not entitled to any relief from this Court/Tribunal. Accordingly, both these issues are answered against the petitioner and in favour of respondent.

RELIEF

26. As a sequel to my above discussion and findings on issues no.1 & 2, the claim of the petitioner **fails and merits of the instantaneous application deserves dismissal and the same is hereby ordered to be dismissed. The petitioner is not entitled to any relief as prayed by him. The parties to the lis are left behind to bear their costs respectively.**

27. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 2nd day of Jan., 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Application Number : 34 of 2021

Instituted on : 11-12-2019

Decided on : 02-01-2023

Sher Singh s/o Shri Liaq Ram, r/o Village Bhuila Kashmiri, P.O. Saryanj, Tehsil Arki, District Solan H.P. . *Petitioner.*

VERSUS

1. Executive Engineer, Electrical Division HPSEBL, Arki, District Solan, H.P.
2. SDO Electrical Sub Division HPSEBL, Darla, Division Arki, District Solan, H.P. . *Respondents.*

Application under section 2(A) 2 of Industrial Disputes (Amendment) Act, 2010

For the Petitioner : Shri Raj Kumar, Advocate

For the Respondents : Shri Surinder Sharma, Adv.

ORDER/AWARD

This is an application on behalf of the claimant in terms of section 2(A) 2 of the Industrial Disputes Act (Amendment) Act, 2010 (hereinafter to be referred as the Act) seeking reinstatement along-with all consequential benefits including back-wages, seniority, continuity and regularization.

2. Key facts necessary for the disposal of the present petition as alleged by the petitioner in the application are thus that he was initially engaged on daily wage basis w.e.f. 1984 and worked till 1995. The services of the petitioner were terminated without assigning reasons and without serving any prior notice as required under section 25-F of the Act and without paying compensation. The respondent had engaged fresh persons and retained many juniors after the illegal termination of the petitioner. The petitioner had completed 240 working days in a calendar year. There is violation of sections 25-B, 25-F, 25-G and 25-H of the Act.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

“It is therefore respectfully prayed that directions may kindly be issued to the respondents to re-instate the claimant in service along-with all consequential benefits/relief(s) of back-wages, seniority, continuity and regularization of service and the cost of the petition may kindly be awarded in favour of the claimant in the interest of law and justice”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia raising preliminary objections of no cause of action, the petitioner has not come to the Court with clean hands and there is no industrial dispute in between the petitioner and the respondent.

5. On merits, it is submitted that the petitioner was engaged as casual labourer by the respondent from 21.9.1984 to 20.7.1993. The petitioner had left the job on his own sweet will. The

petitioner had not completed 240 days in any calendar year. The services of the petitioner have never been terminated by the respondent who himself had abandoned the job and never turned back, hence, the violation of the provisions of section 25-F of the Act, does not arise at all.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 07.04.2022, as under:

1. Whether the termination of the services of the petitioner by the respondent without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? If so what relief of service benefits the petitioner is entitled to?
..OPP.
2. Whether the claim petition filed by the petitioner is neither competent nor maintainable in the present form, as alleged?
..OPR.
3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No.1	Decided accordingly
Issue No.2	Yes
Relief.	Application dismissed as per operative part of award/order

REASONS FOR FINDINGS

ISSUES NO.1 & 2

11. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. In order to substantiate its case, the petitioner has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition. He also tendered into evidence demand notice (PW-1/B), proceedings (PW-1/C) and Casual Card (PW-1/D).

13. In cross-examination, on behalf of respondent, he denied that he had abandoned the job in the year 1993. He further denied that he had not completed 240 days in a calendar year. He admitted that he filed a case before the Hon'ble High Court which was withdrawn. He further admitted that he filed representation before the respondent which was considered and rejected.

14. In order to rebut, the respondent has examined Shri Joginder Singh, Sr. Assistant of respondent as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence mandays chart (R-1), copy of order dated 30.10.2018 (R-2), copy of order dated 3.4.2013 (R-3), copy of judgments dated 10.10.2012 and 01.03.2011 Mark RX-1 and Mark RX-2 respectively.

15. In cross-examination, on behalf of petitioner he denied that the respondent had engaged new hands for work. He further denied that S/Shri Tulsi Ram, Kirpa Ram are still working with the respondent. He denied that the petitioner had completed 240 days in a calendar year. He also denied that the services of the petitioner were terminated without issuing any notice and paying any retrenchment compensation.

16. This is the entire oral as well as documentary evidence adduced from the side of the parties.

17. Shri Rajkumar, Ld. Counsel for the petitioner has contended with all vehemence that the time period from the date of raising of demand notice has exceeded the prescribed period. He further contended that the services of the petitioner were terminated without issuing any show cause notice, chargesheet and without paying any retrenchment compensation, hence, the illegal termination of the petitioner amounts to “retrenchment”. It is therefore prayed that the petitioner is entitled to be reinstated in service along-with all consequential service benefits including back-wages. He has also placed on record the copy of award dated 17.3.2017 passed by this Tribunal in **reference no. 1 of 2016 and judgment passed by the Hon’ble High 4696 of 2009 decided on 1.3.2011 titled as Mansa Ram vs. State of HP and Ors.**

18. *Per contra*, Shri Surender Sharma, Ld. Counsel for the respondent urged that the present petition which has been filed by the petitioner directly before this Court is not maintainable. He further argued that the services of the petitioner were never terminated by the respondent. The petitioner himself abandoned the job without any reason. He also argued that the petitioner had not completed 240 days in any calendar year. He prayed for the dismissal of the claim petition.

19. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Thus, from a careful examination of the case record, it is manifestly clear on record that the present application has been filed directly before this Tribunal by the petition by invoking section 2-A of the Act. The provisions of section 2-A are reproduced as under:

“2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.—

- (1) Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.**
- (2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of**

forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

- (3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1)."**

21. Verily, it is pertinent to point out here that the provisions of sub section 2 of section 2-A is a non-obstante clause. Section 2-A of the Act enables the individual workman to raise a dispute connected with or arising out of his discharge, dismissal, retrenchment or otherwise termination of his services by his employer and by legal fiction it would constitute "Industrial Dispute". No other type of dispute regarding an individual workman is contemplated by Section 2A. After the enactment of Section 2A, it is not necessary that a dispute relating to the discharge, dismissal, retrenchment or otherwise termination of service of a workman must be sponsored by a trade union or a substantial number of workman. In other words, even if it is not sponsored by a trade union or a substantial number of workman, such a dispute will be deemed to be an industrial dispute. The said amendment in the Act came into effect on and from 15th September, 2010. In the absence of any specific provision to the contrary Act 24 of 2010 is to be held operative prospectively. The effect of amendment is that any workman who has been discharged, dismissed, retrenched or terminated as specified in sub-section (1) of Section 2A may make an application directly to the Labour Court or Tribunal for adjudication of his individual dispute after the expiry of 45 days from the date he has made an application to the conciliation officer of the appropriate Government for conciliation of the dispute. Sub-Section (3) of Section 2A lays down the time limit for making such application to Labour Court or Tribunal. It provides that such application to the Labour Court or Tribunal for adjudication of the dispute shall be made before the expiry of three years from the date of discharge, dismissal and retrenchment or otherwise termination of service as specified in sub-Section(1). A bare reading of above provision would indicate that a dispute covered under sub-Section(1) can be agitated or questioned by a workman by making an application directly to the Labour Court or Tribunal for adjudication of such dispute and such application should be filed before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service. In other words, the right conferred under Section 2A would lapse immediately preceding the date of expiry of three years of the date of dismissal, discharge etc. Sub-Section (3) of Section 2A would operate independently. The right available to the workman under Section 2A is not withstanding anything contained in Section 10 of the ID Act. Thus, question which would arise for consideration in the instant case is; whether dispute raised beyond three years from the date of discharge, dismissal or retrenchment can be entertained by the Labour Court or Tribunal by condoning the delay if any in raising the dispute or filing a claim petition. Prior to incorporation of Section 2A, a workman had to necessarily depend upon the reference under Section 10(1)(c) of the Act. The incorporation of Section 2A enabled the workman to approach the Labour Court or Tribunal directly and prevented the mischief of unreasonable delay occasioning on account of reference not being referred to by the appropriate Government under Section 10(1)(c) of the Act. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1). Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2-A does not appear to have a bearing to the provisions of sub- Section

(2) of Section 2-A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned even by taking recourse to Section 5 of the Limitation Act, 1963, which has no application to the provisions of Industrial Disputes Act, 1947.

22. It is well recognized principle of law that if an act is required to be performed within a specified time, the same would primarily be mandatory. The Hon'ble Apex Court in the case of **Naziruddin VS Sitaram Agarwal reported in AIR 2003 SCW 908**, has held as under:

"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."

23. Thus, in the background of the dicta of the Apex Court in Naziruddin's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words 'at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words 'before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made. The Hon'ble High Court of Karnataka has observed in **Writ Petition No.27510/2015 case titled as M/S ITC Infotech India Ltd., VS Mr. Venkataramana Uppada** that the Labour Court cannot entertain a claim petition filed under Section 2A(2) of the I.D. Act after three years from the date of discharge, dismissal, retrenchment or termination and Labour Court was not justified in condoning the delay of 730 days in filing the claim petition.

24. In the instant case, admittedly, no steps were taken by the petitioner prior to the expiry of three years from the date of such termination to make statutory provision enabling him to approach the Court without the requirement of reference petition to be received from the appropriate government in case of dispute under section 2-A of the Act. Admittedly, the petitioner has claiming that he had worked with the respondent on daily wage basis w.e.f. 1986 till 1995. It is also an admitted fact that the present industrial dispute has been raised by him after more than 19 years. From the perusal of order dated 30.10.2018, passed by the Labour Commissioner, it is also established on record that the Labour Commissioner has also declined to refer the matter to this Court for adjudication.

25. For the foregoing reasons and having regard to the law laid down (supra) *vis-à-vis* my aforesaid discussion, the present application filed by the petitioner directly before this Court after the expiry of 24 years from the date of his termination, the same is not maintainable and as such the petitioner is not entitled to any relief from this Court/Tribunal. Accordingly, both these issues are answered against the petitioner and in favour of respondent.

RELIEF

26. As a sequel to my above discussion and findings on issues no.1 & 2, the claim of the petitioner **fails and merits of the instantaneous application deserves dismissal and the same is hereby ordered to be dismissed. The petitioner is not entitled to any relief as prayed by him. The parties to the lis are left behind to bear their costs respectively.**

27. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 2nd day of Jan., 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Application Number : 58 of 2021

Instituted on : 11-12-2019

Decided on : 02-01-2023

Sita Ram s/o Shri Narayan Dass, r/o Village Jadli, P.O. Patta Bharauri, Tehsil and District Shimla, H.P. . *Petitioner.*

VERSUS

1. HPSEBL, through its Executive Director, Vidyut Bhawan, Kumar House, Shimla.
2. Executive Engineer, Electrical Division HPSEBL, Arki, District Solan, H.P.
3. SDO HPSEBL Electrical Sub Division HPSEBL, Kunihar, Division Arki, District Solan, H.P. . *Respondents.*

Application under section 2(A) 2 of Industrial Disputes (Amendment) Act, 2010

For the Petitioner : Shri Raj Kumar, Advocate

For the Respondents : Shri Surinder Sharma, Adv.

ORDER/AWARD

This is an application on behalf of the claimant in terms of section 2(A) 2 of the Industrial Disputes Act (Amendment) Act, 2010 (hereinafter to be referred as the Act) seeking reinstatement

along-with all consequential benefits including back-wages, seniority, continuity and regularization.

2. Key facts necessary for the disposal of the present petition as alleged by the petitioner in the application are thus that he was initially engaged on daily wage basis w.e.f. 1981 and worked till 1989. The services of the petitioner were terminated without assigning reasons and without serving any prior notice as required under section 25-F of the Act and without paying compensation. The respondent had engaged fresh persons and retained many juniors after the illegal termination of the petitioner. The petitioner had completed 240 working days in a calendar year. There is violation of sections 25-B, 25-F, 25-G and 25-H of the Act.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

“It is therefore respectfully prayed that directions may kindly be issued to the respondents to re-instate the claimant in service along-with all consequential benefits/relief(s) of back-wages, seniority, continuity and regularization of service and the cost of the petition may kindly be awarded in favour of the claimant in the interest of law and justice”

4. The lis was resisted and contested by respondent by filing written reply on inter-alia raising preliminary objections of no cause of action, the petitioner has not come to the Court with clean hands and there is no industrial dispute in between the petitioner and the respondent.

5. On merits, it is submitted that the petitioner was engaged as casual labourer by the respondent from 26.05.1981 to 20.11.1988. The petitioner had left the job on his own sweet will. The petitioner had not completed 240 days in any calendar year. The services of the petitioner have never been terminated by the respondent who himself had abandoned the job and never turned back, hence, the violation of the provisions of section 25-F of the Act, does not arise at all.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. On elucidating the pleading of parties, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 07.04.2022, as under:

1. Whether the termination of the services of the petitioner by the respondent without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified as alleged? If so what relief of service benefits the petitioner is entitled to?

. .OPP.

2. Whether the claim petition filed by the petitioner is neither competent nor maintainable in the present form, as alleged?

. .OPR.

3. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue No.1	Decided accordingly
Issue No.2	Yes
Relief.	Application dismissed as per operative part of award/order

REASONS FOR FINDINGS

ISSUES NO.1 & 2

11. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. In order to substantiate its case, the petitioner has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition. He also tendered into evidence postal receipt (P-1), application dated 16.11.1999 (P-2), detail of work Mark PX-1, copy of application Mark PX-2, demand notice Mark PX-3, reply Mark PX-4 and Mark PX-5, copy of judgment dated 14.5.2019 Mark PX-6, copy of order Mark PX-7 and copy of CWP No. 263 of 2018 Mark PX-8.

13. In cross-examination, on behalf of respondent, he denied that he had abandoned the job in the year 1998. He further denied that he had not completed 240 days in a calendar year. He admitted that he filed a case before the Hon'ble High Court. He further admitted that he filed representation before the respondent which was considered and rejected.

14. In order to rebut, the respondent has examined Shri Joginder Singh, Sr. Assistant of respondent as (RW-1), who tendered in evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence mandays chart (R-1), copy of order dated 30.10.2018 (R-2), copy of order dated 3.4.2013 (R-3), copy of judgments dated 10.10.2012 and 01.03.2011 Mark RX-1 and Mark RX-2 respectively.

15. In cross-examination, on behalf of petitioner he denied that the respondent had engaged new hands for work. He further denied that S/Shri Tulsi Ram, Kirpa Ram are still working with the respondent. He denied that the petitioner had completed 240 days in a calendar year. He also denied that the services of the petitioner were terminated without issuing any notice and paying any retrenchment compensation.

16. This is the entire oral as well as documentary evidence adduced from the side of the parties.

17. Shri Rajkumar, Ld. Counsel for the petitioner has contended with all vehemence that the time period from the date of raising of demand notice has exceeded the prescribed period. He further contended that the services of the petitioner were terminated without issuing any show cause notice, chargesheet and without paying any retrenchment compensation, hence, the illegal termination of the petitioner amounts to „retrenchment“. It is therefore prayed that the petitioner is entitled to be reinstated in service along-with all consequential service benefits including back-wages. He has also placed on record the copy of award dated 17.3.2017 passed by this Tribunal in **reference no. 1 of 2016 and judgment passed by the Hon'ble High 4696 of 2009 decided on 1.3.2011 titled as Mansa Ram vs. State of HP and Ors.**

18. *Per contra*, Shri Surender Sharma, Ld. Counsel for the respondent urged that the present petition which has been filed by the petitioner directly before this Court is not maintainable. He further argued that the services of the petitioner were never terminated by the respondent. The petitioner himself abandoned the job without any reason. He also argued that the petitioner had not completed 240 days in any calendar year. He prayed for the dismissal of the claim petition.

19. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the parties and have also scrutinized the entire case record with minute care, caution and circumspection.

20. Thus, from a careful examination of the case record, it is manifestly clear on record that the present application has been filed directly before this Tribunal by the petition by invoking section 2-A of the Act. The provisions of section 2-A are reproduced as under:

“2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.—

- (1) Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.**
- (2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.**
- (3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).”**

21. Verily, it is pertinent to point out here that the provisions of sub section 2 of section 2-A is a non-obstante clause. Section 2-A of the Act enables the individual workman to raise a dispute connected with or arising out of his discharge, dismissal, retrenchment or otherwise termination of his services by his employer and by legal fiction it would constitute "Industrial Dispute". No other type of dispute regarding an individual workman is contemplated by Section 2A. After the enactment of Section 2A, it is not necessary that a dispute relating to the discharge, dismissal, retrenchment or otherwise termination of service of a workman must be sponsored by a trade union or a substantial number of workman. In other words, even if it is not sponsored by a trade union or a substantial number of workman, such a dispute will be deemed to be an industrial dispute. The said amendment in the Act came into effect on and from 15th September, 2010. In the absence of any specific provision to the contrary Act 24 of 2010 is to be held operative prospectively. The effect of amendment is that any workman who has been discharged, dismissed, retrenched or terminated as specified in sub-section (1) of Section 2A may make an application

directly to the Labour Court or Tribunal for adjudication of his individual dispute after the expiry of 45 days from the date he has made an application to the conciliation officer of the appropriate Government for conciliation of the dispute. Sub-Section (3) of Section 2A lays down the time limit for making such application to Labour Court or Tribunal. It provides that such application to the Labour Court or Tribunal for adjudication of the dispute shall be made before the expiry of three years from the date of discharge, dismissal and retrenchment or otherwise termination of service as specified in sub-Section(1). A bare reading of above provision would indicate that a dispute covered under sub-Section(1) can be agitated or questioned by a workman by making an application directly to the Labour Court or Tribunal for adjudication of such dispute and such application should be filed before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service. In other words, the right conferred under Section 2A would lapse immediately preceding the date of expiry of three years of the date of dismissal, discharge etc. Sub-Section (3) of Section 2A would operate independently. The right available to the workman under Section 2A is not withstanding anything contained in Section 10 of the ID Act. Thus, question which would arise for consideration in the instant case is; whether dispute raised beyond three years from the date of discharge, dismissal or retrenchment can be entertained by the Labour Court or Tribunal by condoning the delay if any in raising the dispute or filing a claim petition. Prior to incorporation of Section 2A, a workman had to necessarily depend upon the reference under Section 10(1)(c) of the Act. The incorporation of Section 2A enabled the workman to approach the Labour Court or Tribunal directly and prevented the mischief of unreasonable delay occasioning on account of reference not being referred to by the appropriate Government under Section 10(1)(c) of the Act. Keeping the above principles in mind, a reading of Section 2A(3) would lead to an irresistible conclusion that time stipulated for invoking the jurisdiction of the Labour Court or the Tribunal as the case may be, has to be necessarily "before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-Section (1). Time limit for making an application to the Labour Court stipulated in sub-Section (3) of Section 2-A does not appear to have a bearing to the provisions of sub-Section (2) of Section 2-A. In any event right conferred under Section 2A would lapse immediately preceding the date of expiry of three years from the date of dismissal, discharge etc.,. In other words, the limitation of three years prescribed under sub-Section (3) of Section 2A being mandatory, same cannot be condoned even by taking recourse to Section 5 of the Limitation Act, 1963, which has no application to the provisions of Industrial Disputes Act, 1947.

22. It is well recognized principle of law that if an act is required to be performed within a specified time, the same would primarily be mandatory. The Hon'ble Apex Court in the case of **Naziruddin VS Sitaram Agarwal reported in AIR 2003 SCW 908**, has held as under:

"The Courts jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case, the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract the words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of legislature must be gathered from the language used."

23. Thus, in the background of the dicta of the Apex Court in Naziruddin's case referred to supra, when Section 2A is perused, it would indicate that if the legislature really intended that the period of limitation provided in sub-Section (3) of Section 2A was to be construed as directory, then it would not have prescribed the limitation of three years and it would have used the words "at any time" instead of using the words "before the expiry of three years". Though the words 'at any time' is found in Section 10(1), same is conspicuously absent in sub-Section(3) of Section 2A

which would clearly depict the intention of the legislature namely, it had deliberately imposed limitation period under sub-Section (3) of Section 2A and as such legislature did not employ the words at any time in the said provision as found in Section 10(1) and in its place, it has specifically incorporated the words before the expiry of three years'. Hence, to interpret the period of limitation found in sub-Section (3) of Section 2A as directory and not mandatory would amount to adding something which is not provided in the provision by the legislature or it would amount to doing violence to the provision, if such interpretation is sought to be made. The Hon'ble High Court of Karnataka has observed in **Writ Petition No.27510/2015 case titled as M/S ITC Infotech India Ltd., VS Mr. Venkataramana Uppada** that the Labour Court cannot entertain a claim petition filed under Section 2A(2) of the I.D. Act after three years from the date of discharge, dismissal, retrenchment or termination and Labour Court was not justified in condoning the delay of 730 days in filing the claim petition.

24. In the instant case, admittedly, no steps were taken by the petitioner prior to the expiry of three years from the date of such termination to make statutory provision enabling him to approach the Court without the requirement of reference petition to be received from the appropriate government in case of dispute under section 2-A of the Act. Admittedly, the petitioner has claiming that he had worked with the respondent on daily wage basis w.e.f. 1986 till 1995. It is also an admitted fact that the present industrial dispute has been raised by him after more than 19 years. From the perusal of order dated 30.10.2018, passed by the Labour Commissioner, it is also established on record that the Labour Commissioner has also declined to refer the matter to this Court for adjudication.

25. For the foregoing reasons and having regard to the law laid down (supra) *vis-à-vis* my aforesaid discussion, the present application filed by the petitioner directly before this Court after the expiry of 24 years from the date of his termination, the same is not maintainable and as such the petitioner is not entitled to any relief from this Court/Tribunal. Accordingly, both these issues are answered against the petitioner and in favour of respondent.

RELIEF

26. As a sequel to my above discussion and findings on issues no.1 & 2, the claim of the petitioner **fails and merits of the instantaneous application deserves dismissal and the same is hereby ordered to be dismissed. The petitioner is not entitled to any relief as prayed by him. The parties to the lis are left behind to bear their costs respectively.**

27. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 2nd day of Jan., 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Instituted on : 04-01-2023

Decided on : 09-01-2023

Ashwani Kumar s/o Shri Durga Singh, r/o Village Hanstari, P.O. Samsa, Tehsil Rohru,
District Shimla . . . *Petitioner.*

VERSUS

The Manager M/s SrijanBhog Co. Pvt. Ltd., BCS New Shimla, 171009 . . . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Shri Khushi Ram Verma, Advocate

For the Respondent : Shri Prateek Kumar, Adv.

AWARD/ORDER

The following reference petition has been, received from the Appropriate Government *vide* notification dated 16.12.2022, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether the termination of the services of Shri Ashwani Kumar s/o Shri Durga Singh, r/o Village Hanstari, P.O. Samsa, Tehsil Rohru, District Shimla by the Manager M/s Srijan Bhog Co. Pvt. Ltd., BCS, New Shimla, 171009 w.e.f. 24.12.2020 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement seniority, amount of back-wages, past service benefits and compensation to the above aggrieved workman is entitled to from the above employer/management.”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri Khushi Ram Verma, Advocate had appeared on behalf of the petitioner whereas Shri Prateek Kumar, Advocate had appeared for respondent.

3. To the fore Shri Chinta Mani Sharma, Proprietor of the respondent company has stated at the bar that the Industrial Dispute raised on behalf of the petitioner stood amicably resolved by way of an amicable settlement. As per the settlement the respondent company, is ready and willing to pay a sum of ₹ 1,02,000/- (₹15,760/- in cash today itself) and ₹ 86,257/- shall be paid on or before 31.01.2023 in his bank account. He has also placed on record the memorandum of settlement (PX) and copy of his Aadhar card (PY). To this effect his statement recorded separately and placed on record.

4. Vide separate statement the petitioner has stated that the industrial dispute raised on his behalf stood amicably resolved by way of an amicable settlement. As per the settlement the respondent/company is ready and willing to make him the full and final payment towards lump sum compensation amounting to Rs. 1,02,000/- (One Lakh Two Thousand)), which is acceptable to him. As per the settlement an amount of Rs. 15,760/- has been paid to him today in the Court and remaining amount of ₹ 86,257/- shall be paid on or before 31.01.2023 in his bank account. Nothing survives in the present petition. The above said statement was read over and explained to him which is duly accepted by him. The petitioner has placed on record the copy of his Aadhar card (PZ).

5. Thus, keeping in view that attendant facts and circumstances of the case *vis-a-vis* perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by

the petitioner and he has been paid a sum of Rs. 15,760/- today in the Court and remaining amount of ₹ 86,257/- shall be credited in his bank account on or before 31.01.2023. Therefore, the industrial dispute raised from the side of the petitioner arising out of reference no. 10 of 2023, stood amicably settled between the parties.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying Rs. 15,760/- today in the Court and remaining amount of ₹ 86,257/- shall be credited in his bank account on or before 31.01.2023. This a part, the petitioner is also entitled for his/her admissible legal dues as per law such as EPF, ESI etc. It is made expressly clear in case the respondent failed to pay the remaining amount i.e. Rs. ₹ 86,257/- till 31.01.2023, the same shall carry interest @ 9% per annum.** The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record i.e memorandum of settlement (PX), Aadhar cards (PY) & (PZ), which shall form the integral part and parcel of this award.

7. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced : 09-01-2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Application Number : 149 of 2020
Instituted on : 28-12-2020
Decided on : 09-01-2023

M/s Srijan Bhog Co. Pvt. Ltd., having its registered office at Yashodha Bhawan, BCS, New Shimla, 171009 through Shri Chandermani Sharma S/o late Shri Basti Ram (Authorized Signatory)
..Applicant.

VERSUS

**Ashwani Kumar s/o Shri Durga Singh r/o Village Hanstari, P.O. Samsa, Tehsil Rohru,
District Shimla.**
..Respondent.

Application under section 33-2(b) of the Industrial Disputes Act, 1947 read-with Rule 64 (1) of the HP Industrial Disputes Rules, 1974.

For the Petitioner : Shri Rahul Mahajan, Advocate

For the Respondent : Shri Khushi Ram Verma, Adv.

AWARD/ORDER

This order shall dispose off an application filed by the applicant under section 33-2(b) of the Industrial Disputes Act, 1947 read-with Rule 64 (1) of the HP Industrial Disputes Rules, 1974 for seeking approval for taking action qua dismissal of service of respondent/workman.

2. By filing reply, the respondent/workman resisted and contested the application and prayed for its dismissal.

3. To the fore Shri Chinta Mani Sharma, Proprietor of the applicant company has stated at the bar that since the Industrial Dispute stood amicably resolved by way of an amicable settlement and as per the settlement the respondent company, is ready and willing to pay a sum of ₹ 1,02,000/- (₹ 15,760/- in cash today itself) and ₹ 86,257/- shall be paid on or before 31.01.2023 in his bank account. He has also placed on record the memorandum of settlement (PX) and copy of his Aadhar card (PY). To this effect his statement recorded separately and placed on record.

4. Vide separate statement the respondent/workman has stated that since the industrial dispute stood amicably resolved by way of an amicable settlement and as per the settlement the applicant/company is ready and willing to make him the full and final payment towards lump sum compensation amounting to Rs. 1,02,000/- (One Lakh Two Thousand)), which is acceptable to him. As per the settlement an amount of Rs. 15,760/- has been paid to him today in the Court and remaining amount of ₹ 86,257/- shall be paid on or before 31.01.2023 in his bank account. Nothing survives in the present petition. The above said statement was read over and explained to him which is duly accepted by him. The petitioner has placed on record the copy of his Aadhar card (PZ).

5. Thus, keeping in view that attendant facts and circumstances of the case vis- a -vis perusal of the case record manifestly and conclusively goes to demonstrates that the present Industrial Dispute stood amicably resolved and finally compromised between the parties and the respondent/workman has been paid a sum of Rs. 15,760/- today in the Court and remaining amount of ₹ 86,257/- shall be credited in his bank account on or before 31.01.2023. Therefore, the present industrial dispute arising out of application no. 149 of 2020, stood amicably settled between the parties.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the present industrial dispute stood amicably settled to which the respondent/workman has been fully & finally compensated by paying Rs. 15,760/- today in the Court and remaining amount of ₹ 86,257/- shall be credited in his bank account on or before 31.01.2023. This a part, the petitioner is also entitled for his/her admissible legal dues as per law such as EPF, ESI etc. It is made expressly clear in case the respondent failed to pay the remaining amount i.e. Rs. 86,257/- till 31.01.2023, the same shall carry interest @ 9% per annum.** The application is disposed off accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record i.e memorandum of settlement (PX), Aadhar cards (PY) & (PZ), which shall form the integral part and parcel of this award.

7. The application is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced : 09-01-2023

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 121 of 2020

Instituted on : 17-07-2020

Decided on : 09-01-2023

Darshan Singh s/o Shri Pyara Lal, r/o Village Mansali, P.O. Ghanoli, Tehsil & District Ropar, Punjab. . *Petitioner.*

VERSUS

The Managing Director M/s Onyx Biotec Pvt. Ltd., Village Bir Plassi, Ropar Nalagarh Road, Nalagarh, District Solan, H.P. . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Prateek Kumar, Advocate

For respondent : Shri Rajiv Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 18.06.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the services of Sh. Darshan Singh s/o Shri Pyara Lal r/o Village Mansali, P.O. Ghanoli, Tehsil & District Ropar, Punjab w.e.f. 18.6.2019 by the Managing Director, M/s Onyx Biotec Pvt. Ltd., Village Bir Plassi, Ropar Nalagarh Road, Nalagarh, District Solan, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged, is legal and justified? If not, what relief including reinstatement, amount of back wages, seniority, past service benefits and compensation the above ex-worker, is entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner had appeared in person whereas Ms. Rinku Kaul, Advocate had appeared for respondent.

3. To the fore Shri Fateh Pal Singh, Manager, HR of respondent company has stated at the bar that the Industrial Dispute raised on behalf of the petitioner stood amicably resolved by way of an amicable memorandum of settlement (PX) and the respondent company has agreed to pay an amount of Rs. 2,10,000/- (Rs. Two Lakhs and Ten Thousand only) towards full and final settlement amount of the claim on or before 31.01.2023, failing which the respondent company shall be liable to pay penal interest @ 9% per annum. He has also placed on record memorandum of settlement (PX), Aadhar card (PY) and Aadhar card of petitioner (PZ). To this effect his statement recorded separately and placed on record.

4. Vide separate statement the petitioner has stated that the industrial dispute raised on his behalf stood amicably resolved by way of an amicable settlement. As per the settlement the

respondent/company is ready and willing to make him the full and final payment towards lump sum compensation amounting to Rs. 2,10,000/- (Two Lakhs Ten Thousand Only), which the acceptable to him. The full and final settlement award shall be paid to him on or before 31.1.2023, failing which the respondent company shall be liable to pay penal interest @ 9% per annum. Nothing survives in the present petition. The above said statement was read over and explained to him which is duly accepted by him.

5. Thus, keeping in view that attendant facts and circumstances of the case *vis-a-vis* perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner as the respondent company has agreed to pay an amount of Rs. 2,10,000/- (Rs. Two Lakhs and Ten Thousand only) as full and final settlement amount of the claim on or before 31.01.2023. Therefore, the industrial dispute raised from the side of the petitioner arising out of reference no. 121/2020, stood amicably settled between the parties.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by the respondent by agreeing to pay an amount of Rs. 2,10,000/- (Rs. Two Lakhs and Ten Thousand only) towards full & final settlement of the claim on or before 31.01.2023. It is made clear that if the respondent failed to pay agreed amount of Rs. 2,10,000/- (Rs. Two Lakhs and Ten Thousand only) on or before 31.01.2023, the same shall carry interest @ 9% per annum. The reference is answered accordingly and the award is passed as per the statements of both the parties as well as documentary proof placed on record i.e. memorandum of settlement (PX), Aadhar Cards (PY) and (PZ), which shall form the integral part and parcel of this award.

7. The reference is disposed off accordingly. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA
Camp at Kasauli**

Reference Number : 23 of 2022
Instituted on : 14-01-2022
Decided on : 16-01-2023

Kamaldeep s/o Shri Inder Pal, r/o Village Khilwar Ser, P.O. Kumarhatti, District Solan,
H.P.

. Petitioner.

VERSUS

The Principal Dagshai Public School, Dagshai Cantt., District Solan, H.P. *. Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For Petitioner : Shri Niranjan Verma, Advocate

For Respondent : Shri Vikas Chauhan, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 09.07.2021, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the services of Shri Kamaldeep s/o Shri Inder Pal, r/o Village Khilwar Ser, P.O. Kumarhatti, District Solan, HP w.e.f. 25.02.2020 by the Employer i.e. The Principal Dagshai Public School, Dagshai Cantt. District Solan, H.P. without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement of the service, back wages, other consequential service benefits and compensation the above aggrieved workman is entitled to from the above stated employer?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has filed his statement of claim praying therein for his reinstatement with all service benefits including back-wages.

3. To the fore, Shri Kamaldeep, the petitioner has stated that regarding his termination of services by the respondent school w.e.f. 25.02.2020, he raised the demand notice, which was referred to this Court by the Labour Commissioner vide notification dated 09.07.2021 under section 10 of the Act, which was duly registered vide reference no. 23 of 2022 to which the claim petition was also filed. He further stated that the said industrial dispute stood amicably resolved and settled between the parties, whereby he has tendered his resignation dated 10.01.2023. An amount of Rs. 53,312/- has been paid to him through cheques no. 003045 and 003157 dated 10.01.2023 today in the Court and remaining amount of Rs. 12700/- shall be paid to him within 15 days. He has also placed on record copy of resignation which has been written by him (in Hindi) (PA), copy of resignation (typed) (PB), copy of gratuity calculation (PC) copy of full & final settlement statement (PD), salary sheet (PE), copy of cheque amounting to Rs. 45,577/- (PF), copy of cheque amounting to Rs. 7735/- (PG), copy of application dated 10.01.2023 (PH), copy of provisional appointment dated 10.01.2023 (PJ), copy of bonafide certificates (PK) and (PL), and copy of cheque amounting to Rs. 12,700/-. To this effect his statement recorded separately.

4. On the other hand Shri Ankush Sood, Admin Officer of the respondent school, vide his separate statement, has stated that the matter stood amicably resolved between the parties to which the respondent school has agreed to pay an amount of Rs, 55,000/- as gratuity +Rs. 11,000/- as lump sum compensation total Rs. 66,000/- out of which Rs. 53,312 has been paid today vide cheques no. 003045 and 003157 to the petitioner and balance amount of Rs. 12,700/- shall be paid to the petitioner within fifteen days. Now, nothing survive in the present reference petition.

5. Thus, keeping in view the attendant facts and circumstances of the case *vis-a-vis* perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the late petitioner stood amicably resolved and finally compromised between the parties and the respondent has paid a sum of Rs. 66,000/- (Sixty Six Thousand) as full and final settlement amount of the claim through cheques no. 003045 (PF) amounting to Rs.45,577/-, 003157 (PG) for Rs. 7735/- and 003160 (PM) amounting to Rs. 12,700/- (PY) today

in the Court. From the aforesaid statements of the parties, it is apparently established that the parties have compromised the industrial dispute arising out of reference no. 23 of 2022.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated as the respondent school has paid a sum of Rs. 66,000/- (Sixty Six Thousand) as full and final settlement amount of the claim through cheques no. 003045 (PF) amounting to Rs.45,577/-, 003157 (PG) for Rs. 7735/- and 003160 (PM) amounting to Rs. 12700/- (PY) today in the Court.

7. The reference is answered accordingly and the award is passed as per the statements of parties and copy of resignation which has been written by petitioner (in Hindi) (PA), copy of resignation (typed) (PB), copy of gratuity calculation (PC) copy of full & final settlement statement (PD), salary sheet (PE), copy of cheque amounting to Rs. 45,577/- (PF), copy of cheque amounting to Rs. 7735/- (PG), copy of application dated 10.01.2023 (PH), copy of provisional appointment dated 10.01.2023 (PJ), copy of bonafide certificates (PK) and (PL), and copy of cheque amounting to Rs. 12,700/-, shall form the integral part and parcel of this award.

8. Since along-with the present reference, application no. 30 of 2022 has been clubbed with this reference petition, hence, the application no. 30 of 2022 is ordered to be disposed off in terms of the award passed in this reference petition.

9. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA
CAMP AT KASAULI**

ApplicationNumber : 254 of 2022

Instituted on : 11-10-2022

Decided on : 16-01-2023

1. Inder Pal s/o Shri Achhru Ram.
2. Kalawati w/o Inder Pal, r/o Room No. 9 Dagshai Public School, Dagshai Cantt.
District solan, H.P. ..Petitioner.

VERSUS

The Principal/Vice Chairman Dagshai Public School, Dagshai Cantt., District Solan, H.P.
..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947

For Petitioner : Shri Niranjan Verma, Advocate

For Respondent : Shri Vikas Chauhan, Advocate

AWARD/ORDER

This order of mine shall dispose off an application filed under section 33-A, 33-C(2), 10 (4) of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) read-with section 151 CPC with a prayer to set aside the letter dated 11.7.2022 and directing the respondent not to deduct the amount of full fee of the grand children of the applicants from their salaries and refund the amount to the applicant deduced by the respondent.

2. On receipt of the said application, notices were issued to the respondent pursuance to which Shri Vikas Chauhan, Advocate had appeared on behalf of the respondent.

3. To the fore, Shri Kamaldeep s/o Inderpal and Ms. Kalawati w/o Inder pal have stated that they have settled the dispute with the respondent school as the respondent school has paid an amount of Rs. 66,000/- in reference case no. 23 of 2022 and also agreed to charge the half fee of both the children namely Ankita and Shilpa as they were paying previously. The respondent school has also agreed to give extension in the services of Inder Pal subject to his health. They have placed on record letter dated 10.01.2023 (PA), action of the management (PB) and appointment letter (PC) on record. Since, the respondent school has agreed to accept the claim filed by them, hence they do not want to proceed further with the present application. To this effect their statement recorded separately and placed on record.

4. On the other hand Shri Ankush Sood, Admin Officer of the respondent school, vide his separate statement, has stated that he has heard and understood the statement of applicants, which is acceptable to the respondent school. The respondent school has agreed to receive half fee from both children i.e. Ankit and Shilpa and further extended the services of Inderpal Driver subject to his health condition. The applicants have agreed to withdraw the present petition to which the respondent school has no objection. Now, nothing survive in the present reference petition.

5. Thus, keeping in view the attendant facts and circumstances of the case *vis-a-vis* perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the applicants stood amicably resolved and finally compromised between the parties on the following two conditions:

- (a) There spondent school will charge half fee from both the children *i.e.* Ankit and Shilpa as they were paying previously.
- (b) The respondent school will give extension in the service of applicant Inderpal keeping in view his health conditions.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. Consequently, the industrial dispute raised by the applicants stood amicably settled to which the applicants have been fully & finally compensated.

7. The application is disposed off in the aforesaid terms and conditions. The award/order is passed as per the statements of parties and copy of applications (PA) and (PB), copy of

resignation which has been written by Kamaldeep (in Hindi) (PA), copy of resignation (typed) (PB), copy of gratuity calculation (PC) copy of full & final settlement statement (PD), salary sheet (PE), copy of cheque amounting to Rs. 45,577/- (PF), copy of cheque amounting to Rs. 7735/- (PG), copy of application dated 10.01.2023 (PH), copy of provisional appointment dated 10.01.2023 (PJ), copy of bonafide certificates (PK) and (PL), and copy of cheque amounting to Rs. 12,700/-, shall form the integral part and parcel of this award.

8. Let a copy of this award/order be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA
CAMP AT KASAULI**

Reference Number : 242 of 2020

Instituted on : 01-10-2020

Decided on : 16-01-2023

Pratap Singh s/o Shri Madan Singh r/o Village Smloh, P.O. Rajgarh, District Sirmaur, H.P.
. . *Petitioner.*

VERSUS

The Principal M/s Shiv Shakti B Ed. College, Village Samloh, Tehsil and P.O. Rajgarh,
District Sirmour, H.P. . . *Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri J.C. Bhardwaj, AR

Respondent proceeded against *ex-parte vide* order dated 12.08.2022.

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 19.09.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication, reads as under:

“Whether termination of the services of Sh. Pratap Singh s/o Shri Madan Singh, r/o Village Smloh, P.O. Rajgarh, District Sirmaur, H.P. by the Principal M/s Shiv Shakti, B Ed. College, Village Samloh, Tehsil and P.O. Rajgarh, District Sirmaur, H.P. *w.e.f.* 05.02.2020 without complying with the provisions of the Industrial Disputes Act 1947, is legal and justified? If not, what relief including reinstatement, seniority, back wages, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. Material facts as it emerges from the statement of claim are thus that during the month of April 2014, he was engaged as Chowkidar by the respondent college and remained continued as such till 25.02.2020, on which date his services were terminated by the respondent college by an oral order without any cogent reasons and justification. The petitioner was illegally restrained from attending his duties and no reason was conveyed to him for his illegal retrenchment. The Principal of the college has told the petitioner that his services are no longer required in the College. The services of the petitioner were terminated without issuing any notice and without paying retrenchment compensation and that too without necessary compliance of section 25-F of the Act. The oral termination of the services of the petitioner amounts to unfair labour practice. It is further averred that the services of junior workmen in the same establishment were retained by the respondent while terminating the services of petitioner, hence, there is also a violation of section 25-G and 25-H of the Act. The petitioner has completed 240 days in every calendar year. The action of the respondent college to terminate the services of the petitioner is biased, unfair and unreasonable and followed by the policy of hire and fire formula, which cannot be sustainable on relevant law and facts.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

“Now, it is therefore prayed that your honour may kindly be pleased to award reinstatement to the petitioner/workman in the employment of the respondent establishment/college with retrospective effect i.e. from the date of his illegal removal/termination on 25.02.2020 with full back-wages, seniority and other consequential service benefits throughout and with costs .”

4. Before, I proceed further, it is important to mention here after receiving the reference notification from the appropriate government for its legal adjudication, notices were issued to both the parties pursuant to which Shri Vineetguleria, Advocate had appeared on behalf of petitioner whereas Shri Rahul, Advocate had put in appearance on behalf of the respondent on 20.03.2021 and thereafter the case was listed for filing of statement of claim on 04.05.2021 on which date none has appeared on behalf of the respondent college and thereafter again notices were issued to the respondent through registered post upon which one Shri Ajay Sharma, Advocate has appeared for respondent on 19.10.2021 and the case was adjourned for filing of statement of claim. On 07.01.2022, the petitioner had filed his statement of claim and its copy was supplied to the respondent on the same day. Thereafter, the case was listed for filing of reply but despite having availed five opportunities, the respondent college failed to file any reply and also failed to appear before this Court on 12.08.2022, hence, the respondent was ordered to be proceeded against ex-parte as it is evident from zimini order dated 12.08.2022.

5. No rejoinder has been filed.

6. On elucidating the pleading of statement of claim, the following points were struck down by this Tribunal, for its final determination:

1. Whether the termination of the petitioner w.e.f. 05.2.2020 is violative of the provisions of sections 25-F, 25-G and 25-H of the Industrial Disputes Act, as alleged? If so, to what relief the petitioner is entitled to? . . .*OPP.*
2. Relief

7. Henceforth, the petitioner was asked to adduce oral as well as documentary evidence in support of his statement of claim or issues so framed.

8. I have heard the learned AR for the petitioner and have also gone through the record of the case carefully.

9. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid points are as under:

Issue no.1 Yes

Relief Reference is answered in affirmative awarding reinstatement with seniority and continuity along-with back wages @ 25%.

REASONS FOR FINDINGS

ISSUE NO.1.

10. In order to substantiate its case, the petitioner has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments made that in the claim petition.

11. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner and have also scrutinized the entire case record with minute care, caution and circumspection.

12. Thus, from a careful examination of the entire case record and keeping in view the un rebutted evidence, it is manifestly clear on record that the petitioner had worked as chowkidar with the respondent college w.e.f. April, 2014 and he had worked as such till 25.02.2020 on which date his services were orally terminated by the respondent college without issuing any notice and paying retrenchment compensation. It is also proved on record that the petitioner had worked with the respondent Hotel continuously and had completed more than 240 working days in preceding twelve calendar months prior to his oral termination. Since, the respondent college has failed to appear before this Tribunal in order to counter the allegations of the petitioner by leading cogent and satisfactory evidence documentary despite having been served in accordance with law, therefore, this Tribunal has no other alternate but to believe the version of the petitioner. It is also an admitted position on record that the respondent while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondent while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the minimum requirement of days as fixed by the Government, hence, he is also entitled for the protection of section 25-F of the Act. There is nothing on record, which could remotely suggest that the respondent has duly complied with the provisions of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"25-F: No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

13. So, in view of this enabling provision of the Act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part, reads as under:

"25B. Definition of continuous service. For the purposes of this Chapter;—

- (1) *a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) *where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—*
 - (a) *for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—*
 - (i) *one hundred and ninety days in the case of a workman employed below ground in a mine; and*
 - (ii) *two hundred and forty days, in any other case...."*

14. Since, the petitioner has stated to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act, were not followed or complied with by the respondent in the latter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner. Our own Hon'ble High Court in Civil Writ Petition No. 1440 of 2018 case titled as Prithi Chand Vs. M/s Biogenetic Drugs Pvt. Ltd., decided on 28.10.2022, has held as under:

"12. Though, learned counsel representing the respondent argued that financial condition of the respondent-company is not good, but material available on record nowhere suggests such plea ever came to be raised before the Tribunal below. However, having taken note of length of service rendered by the petitioner i.e. 13.09.2005 till 27.03.2010 coupled with the fact that services of the petitioner were illegally terminated in violation of the various provisions of the Act, this Court deems

it fit to award 50% of the back wages in favour of the petitioner.

13. Consequently, in view of the detailed discussion made hereinabove, the present petition is allowed and impugned award dated 8.05.2018, is quashed and set-aside to the extent that it refuses to grant back wages to the petitioner and respondent is directed to pay 50% of the back wages to the petitioner alongwith up-to-date interest from the date of his termination with seniority and continuity in service, within a period of six weeks from today. Pending applications, if any, also stands disposed of.

15. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified, hence, the petitioner is held entitled for re-instatement in service on the same post and place with seniority and continuity along-with back-wages at the rate of 25% (Twenty Five Percent). Accordingly, this issue is answered in favour of the peittioner and against the respondent.

RELIEF

16. As a sequel to my above discussion and findings on point no.1 the claim of the petitioner succeeds and is hereby allowed. Resultantly, directions are hereby passed to the respondent for the re-engagement/re-instatement of the services of the petitioner on the same post and place along-with seniority and continuity coupled with back-wages at the rate of 25% (Twenty Five Percent) from the date of his illegal termination i.e. w.e.f. 05.02.2020. It is expressly made clear that the back-wages awarded in favour of the petitioner shall be paid within a period of two months from the date of announcement of the award, failing which interest @ 9% (nine percent) would be payable by the respondent. The reference is disposed off in the aforesaid terms.

17. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 16th day of Jan., 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA
CAMP AT KASAULI**

Reference Number : 106 of 2019

Instituted on : 08-07-2019

Decided on : 16-01-2023

Mohinder Kumar s/o Shri Dharam Singh, r/o Village Gasan, P.O. and Tehsil Kasauli, District Solan, H.P. . .Petitioner.

VERSUS

The Manager, M/s Kasauli Exotica, Village Khachar Khana, Tehsil Kasauli, District Solan, H.P. . .Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri J.C. Bhardwaj, AR

Respondent proceeded against ex-parte vide order dated 25.06.2022.

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 29.06.2019, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the services of Sh. Mohinder Kumar s/o Shri Dharam Singh, r/o Village Gasan, P.O. and Tehsil Kasauli, District Solan, H.P. by the management of M/s Kasauli Exotica, Village KhacharKhana, Tehsil Kasauli, District Solan, H.P. w.e.f. 01.06.2018 without complying with the provisions of the Industrial Disputes Act 1947, as alleged by the workman, is legal and justified? If not, what relief including reinstatement, seniority, amount of back wages, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that he was engaged as skilled worker (front office clerk) by the respondent Hotel during the month of May, 2017 and he was performing his duties with sincerity and honesty. The petitioner remained continued till his illegal oral termination from services by the respondent on 01.06.2018. The Manager of the respondent Hotel has illegally restrained the petitioner from attending his duties and when he asked the Manager regarding his illegal termination, the Manager had tried to manhandled him and also abused the petitioner in a very filthy language without any reason. The services of the petitioner have been terminated without complying the provisions of section 25-F of the Act. The termination of the services of the petitioner is duly covered under section 2-oo of the Act. The services of the junior persons were retained by the respondent while terminating the services of the petitioner, hence, there is also breach of sections 25-G and 25-H of the Act. The sudden removal of the petitioner from employment has made his integrity doubtful in the eyes of one and all and as such he is unemployed since the date of his illegal termination. The respondent has caused heavy damage to the petitioner in status and civil consequences.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

“Now, it is therefore prayed that your honour may kindly be pleased to declare the termination of the petitioner as illegal and unjustified and award reinstatement to the petitioner/workman by declaring the termination illegal, null and inoperative by the respondent on 1.6.2018 from the service, with full back-wages, seniority and other consequential service benefits throughout with costs.”

4. Before, I proceed further, it is important to mention here that the respondent Hotel was proceeded against ex-parte as is evident from zimini order dated 01.10.2019. Thereafter, on 05.03.2020, one Shri Dhiraj Verma, Advocate had appeared on behalf of the respondent and filed memo of appearance on behalf of the respondent and also prayed for time to file an application for setting aside ex-parte order dated 01.10.2019 and as such the case was adjourned for 24.03.2020, on which date no application for setting aside ex-parte order dated 01.10.2019 has been filed and the case was adjourned for 29.05.2020 but due to lock down the matter was taken upon 12.01.2021 and thereafter on 08.03.2021, the Ld. Counsel appearing on behalf of the respondent has stated that the application is ready and the same could not be signed by the respondent, hence, the case was adjourned for 22.03.2021 on which date the respondent has filed an application for setting aside ex-parte order. The said application was allowed in view of no objection pleaded from the opposite side subject to payment of costs vide order dated 22.03.2021. Thereafter, the case was listed for filing of reply but despite having availed nine opportunities, the respondent had failed to file any reply. Not only this, when the case was listed on 25.06.2020, again none appeared on behalf of the respondent, hence, the respondent was proceeded against ex-parte as is evident from the order dated 25.06.2022. Not only this, on 03.12.2022, Ms. Neha Rana, Advocate had appeared on behalf of the respondent Hotel and prayed for time to file an application for setting aside ex-parte order dated 25.06.2022 and the case was listed for 27.12.2022 on which date neither any Advocate nor any Authorized Representative had appeared on behalf of the respondent hotel. The respondent Hotel has failed to file any application for setting aside ex-parte order dated 25.06.2022, what to talk about the filing of reply to the claim petition. Such conduct of the respondent Hotel clearly demonstrate that they are not appearing before this Court/Tribunal despite having been served in accordance with law.

5. No rejoinder has been filed.

6. On elucidating the pleading of statement of claim, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 01.10.2019, as under:

1. Whether the termination of the petitioner w.e.f. 01.06.2018 is violative of the provisions of sections 25-F, 25-G and 25-H of the Industrial Disputes Act, as alleged? If so, to what relief the petitioner is entitled to? . . . *OPP.*

2. Relief

7. Henceforth, the petitioner was asked to adduce oral as well as documentary evidence in support of his statement of claim or issues so framed.

8. I have heard the learned AR for the petitioner and have also gone through the record of the case carefully.

9. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes
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Relief	Reference is answered in affirmative awarding reinstatement with seniority and continuity alongwith back-wages at the rate of 50% (Fifty Percent).
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REASONS FOR FINDINGS

ISSUE NO.1.

10. In order to substantiate its case, the petitioner has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition. The petitioner also relied upon his appointment letter (P-1) issued in favour of the petitioner by the respondent showing thereby that the petitioner was engaged in the year 2017. It is provided in the appointment letter that the employment of the petitioner will be subject to termination on one month notice from either side. The respondent hotel also issued the appreciation letter (P-2) and certificate of appreciation (P-3).

11. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner and have also scrutinized the entire case record with minute care, caution and circumspection.

12. Thus, from a careful examination of the entire case record, it is manifestly clear on record that the petitioner was engaged as front office manager by the respondent hotel vide appointment letter (P-1). It is also clear that the petitioner had joined the services with the respondent Hotel during the month of May 2017 and worked as such till 01.06.2018 on which date his services were orally terminated by the respondent without issuing any notice and paying retrenchment compensation. It is also proved on record that the petitioner had worked with the respondent Hotel continuously and had completed more than 240 working days in preceding twelve calendar months prior to his oral termination. Since, the respondent Hotel has failed to appear before this Tribunal in order to counter the allegations of the petitioner by leading cogent and satisfactory evidence documentary despite having been served in accordance with law, therefore, this Tribunal has no other alternate but to believe the version of the petitioner. It is also an admitted position on record that the respondent while terminating the services of the petitioner is to comply with the requirement of the law.

13. The very action on the part of the respondent while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the minimum requirement of days as fixed by the Government, hence, he is also entitled for the protection of section 25-F of the Act. There is nothing on record, which could remotely suggest that the respondent has duly complied with the provisions of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, **which provides as under:**

"25-F: No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;**
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and**
- (c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".**

14. So, in view of this enabling provision of the Act, no workman employed in any industry, who has been in “continuous service” for not less than one year, can be retrenched by the employer unless he has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25-B of the Act, which in its material part, reads as under:

“25B. Definition of continuous service. For the purposes of this Chapter,—

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—*
 - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—*
 - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and*
 - (ii) two hundred and forty days, in any other case....”*

15. Since, the petitioner has stated to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month’s mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act, were not followed or complied with by the respondent in the letter and spirit. The respondent Hotel did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner. **Our own Hon’ble High Court in Civil Writ Petition No. 1440 of 2018 case titled as Prithi Chand Vs. M/s Biogenetic Drugs Pvt. Ltd., decided on 28.10.2022, has held as under:**

“12. Though, learned counsel representing the respondent argued that financial condition of the respondent-company is not good, but material available on record nowhere suggests such plea ever came to be raised before the Tribunal below. However, having taken note of length of service rendered by the petitioner i.e. 13.09.2005 till 27.03.2010 coupled with the fact that services of the petitioner were illegally terminated in violation of the various provisions of the Act, this Court deems it fit to award 50% of the back wages in favour of the petitioner.

13. Consequently, in view of the detailed discussion made hereinabove, the present petition is allowed and impugned award dated 8.05.2018, is quashed and set-aside to the extent that it refuses to grant back wages to the petitioner and respondent is directed to pay 50% of the back wages to the petitioner alongwith up-to-date interest from the date of his termination with seniority and continuity in service, within a period of six weeks from today. Pending applications, if any, also stands disposed of.

16. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified, hence, the petitioner is held entitled for re-instatement in service on the same post and place with seniority and continuity along-with back-wages at the rate of 50% (Fifty Percent). Accordingly, this issue is answered in favour of the peittioner and against the respondent.

RELIEF

16. As a sequel to my above discussion and findings on issue no.1 the claim of the petitioner succeeds and is hereby allowed. Resultantly, directions are hereby passed to the respondent for the re-engagement/re-instatement of the services of the petitioner on the same post and place along-with seniority and continuity coupled with back-wages at the rate of 50% (Fifty Percent) from the date of his illegal termination i.e. w.e.f. 01.06.2018. It is expressly made clear that the back-wages awarded in favour of the petitioner shall be paid **within a period of two months from the date of announcement** of the award, failing which interest @ 9% (nine percent) would be payable by the respondent Hotel. The reference is disposed off in the aforesaid terms.

17. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 16th day of Jan., 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA
CAMP AT NAHAN**

Reference Number : 145 of 2022
Instituted on : 14-03-2022
Decided on : 19-01-2023

Ramesh Kumar s/o Shri Chuhi Ram, r/o Village Swada Nadasi, P.O. Birla, Tehsil Dadahu,
District Sirmour, H.P. . .*Petitioner.*

VERSUS

The Occupier/Factory Manager, M/s Vanesa Cosmetics, Village Johron, Tehsil Nahan,
District Sirmaur, H.P. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For Petitioner : Shri Prateek Kumar, Advocate

For Respondent : Shri Lalit Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 28.02.2022, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the services of Shri Ramesh Kumar s/o Shri Chuhi Ram r/o Village Swada Nadasi, PO Birla, Tehsil Dadahu, District Sirmour, HP during Feb., 2021 by the Occupier/Factory Manager M/s Vanesa Cosmetics, Village Johron, Tehsil Nahan, District Sirmour, HP, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what relief including reinstatement of the service, seniority, amount of back wages, past service benefits and compensation the above aggrieved workman is entitled to from the above employer/management?”

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri Prateek Kumar, Advocate has appeared on behalf of the petitioner whereas Shri Lalit Sharma, Advocate had appeared for respondent.

3. To the fore, Shri Ramesh Kumar, petitioner has stated that he has settled the dispute arising out of reference no. 154 of 2022 with the respondent company to which the respondent company has paid an amount of Rs. 49,421/- towards full and final payment of settlement amount, which he has received today in the Court. Nothing survive in the present reference petition. He has placed on record copy of cheque (PA) and copy of Aadhar Card (PB). To this effect his statement recorded separately.

4. Shri Raj Kishan, Assistant Manager of the respondent company, vide his separate statement, has stated that the industrial dispute raised from the side of the petitioner has been amicably settled between the parties. As per the settlement, the respondent company is ready and willing to pay a sum of Rs, 49,421/- to the petitioner. The aforesaid settlement amount has been paid to the petitioner through cheque No. 009864 dated 19.01.2023 today in the Court. Nothing survive in the present reference petition. He has also placed on record the copy of Aadhar Caard (PC).

5. Thus, keeping in view the attendant facts and circumstances of the case *vis-a-vis* perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the late petitioner stood amicably resolved and finally compromised between the parties and the respondent company has paid a sum of Rs. 49,421/- (Forty Nine Thousand Four Hundred Twenty One) as full and final settlement amount of the claim through cheque no. 009861 dated 19.01.2023 (PA) today in the Court. From the aforesaid statements of the parties, it is apparently established that the parties have compromised the industrial dispute arising out of reference no. 145 of 2022.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated as the respondent has paid a sum of Rs. 49,421/- (Forty Nine Thousand Four Hundred Twenty One) as full and final settlement amount of the claim through cheque no. 009861 dated 19.01.2023 (PA), today in the Court.**

7. The reference is answered accordingly and the award is passed as per the statements of parties and copy of cheque (PA), copy of Aadhar Card of petitioner (PB) and copy of Aadhar Card of Raj Kishan (PC) shall form the integral part and parcel of this award.

8. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA
CAMP AT NAHAN**

Application Number : 78 of 2019

Instituted on : 17-08-2019

Decided on : 19-01-2023

Ram Krishan s/o Shri Darshan Lal r/o Village Kotri, Post Office Kotri Bye Pass, Tehsil Paonta Sahib, District Sirmaur, HP Ex-beldar, IPH Division, Paonta Sahib . *Petitioner.*

VERSUS

The Executive Engineer (IPH) Division Paonta Sahib, District Sirmour, H.P. . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For petitioner : Shri Ashwani Kumar Gupta, Advocate and
Shri Abheyendra Gupta, Advocate

For respondent : Ms. Shailja Thakur, Ld. ADA

AWARD/ORDER

This is an usual claim petition filed under section 2-A of the Industrial Disputes Act, 1947 (hereinafter to be referred as the Act) for re-instatement in service with all consequential retiral benefits thereof.

2. Material facts necessary for the disposal of the present claim petition are thus that the petitioner was engaged as beldar and his services were regularized on 12.01.1995. the services of the petitioner were terminated on the basis of preliminary enquiry held by the SDO concerned without associating the petitioner. The said action of the respondent department has been challenged on the following grounds:

- A. That no chargesheet served upon the applicant under Rule 14 of the CCS Rules, 1965 before imposing the penalty of dismissal from service.**

- B. That no opportunity of hearing was given to the applicant and no evidence was led.**
- C. That the SDO concerned held the ex-parte enquiry and even the copy of the preliminary enquiry report was not given to the applicant.**
- D. That the punishment inflicted upon the applicant is also harass even if it is assumed, not admitted, that the applicant was guilty of the alleged charge.**

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

“That the termination/dismissal of the applicant may be set aside and the applicant may be paid all the benefits incidental thereof such as back-wages and seniority etc., from the due date. Any other relief to which the applicant may be found entitled may also be granted.”

4. The lis was resisted and contested by the respondent by filing written reply on inter-alia raising preliminary objections of maintainability, not come to the Court with clean hands, the petition is baseless, meritless and based on false facts and grounds and the petitioner has filed OA No. 1847 of 2018 before the Administrative Tribunal.

5. On merits, it is submitted that petitioner was engaged as a regular beldar and was posted within the jurisdiction of Giri Irrigation sub Division No.2 Patlioni. The petitioner submitted the false and fictitious record pertaining to his date of birth. On this, enquiry was conducted and the services of the petitioner were terminated. During enquiry, the age of the petitioner as given in the complaint was found to be true. On receiving the enquiry report conducted by the SDO concerned, the same was forwarded to the Superintending Engineer, IPH Circle Nahan for consideration as a result of which, his services were terminated vide order dated 31.03.2018. The disciplinary authority-cum-appointing authority had duly supplied the copy of enquiry report to the petitioner and afforded him full opportunity to make representation against the proposed penalty as such his services were dismissed. It is therefore prayed that the claim petition is based on false facts and grounds and being meritless, deserves to be dismissed in the interest of justice.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the replies filed by respondents and reaffirmed and reiterated those raised in the claim petition.

7. On elucidating the pleading of statement of claim, the following issues were struck down by this Tribunal, for its final determination, vide zimni order dated 04.04.2022, as under:

- 1. Whether the termination of the petitioner by the respondent w.e.f. 31.03.2018, without complying with the provisions of the Industrial Disputes Act, is illegal and unjustified as alleged? If yes, what relief the petitioner is entitled to? ..OPP.
- 2. Whether the claim petition is neither competent nor maintainable in the present form, as alleged? ..OPR.
- 3. Relief

8. Henceforth, both the parties were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned Counsel for the petitioner and Ld. ADA for respondent and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes
Issue No. 2	No
Relief	Petition allowed as per operative part of the award/order

REASONS FOR FINDINGS

ISSUE NO.1

11. In order to substantiate its case, the petitioner has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition. The petitioner has also tendered in evidence copy of Aadhar Card (PW-1/B).

12. In cross-examination, he denied that he filed a false affidavit in Administrative Tribunal. He further denied that he was not engaged as beldar. He also denied that he filed false proof of date of birth to the respondent and during enquiry it was found to be false and fictitious. He denied that he was born in the year 1950 and not 1958. He denied that he was afforded 15 days time to file reply to the enquiry report but he did not file the same. He also denied that his services were terminated under CCS and CCA Rules. He admitted that he had not filed any civil suit in Civil Court regarding correction of date of birth.

13. On the contrary, the respondent department has examined one Shri Mohd. Arshad, XEN IPH Paonta Sahib as RW-1, who tendered into evidence his sworn in affidavit (RW-1/A) wherein he has reiterated almost all the averments as made in the reply. He also tendered into evidence birth certificate (RW-1/B), letter/office order dated 25.3.2017 (RW-1/C), enquiry report (RW-1/D), Nakal Pariwar Register (RW-1/E), office order dated 16.1.2018 (RW-1/F), letter dated 21.2.2018 (RW-1/G), memorandum dated 9.3.2018 (RW-1/H), office order dated 31.3.2018 (RW-1/J) letter dated 18.12.2019 Mark RX-1, letter Mark RX-2 and statement Mark RX-3.

14. In cross-examination, he admitted that the petitioner had worked continuously from 1995 to 2018. He admitted that enquiry was conducted by Assistant Engineer as per CCS and CCA Rules before terminating the services of the petitioner. He denied that the petitioner was not afforded the reasonable opportunity of being heard and the enquiry was not conducted in a fair manner. He further denied that the petitioner was not issued the show cause notice.

15. Shri A. K Gupta, Ld. Counsel for the petitioner has contended with all vehemence that the services of the petitioner were terminated without following the procedure as prescribed under law. The service carrier of the petitioner on the basis of complaint thereby submitting that the petitioner has submitted a false certificate regarding his date of birth. However, the petitioner was not given an opportunity of being heard as per the principles of natural justice. No chargesheet was served. No opportunity of being heard was given. The punishment imposed upon the petitioner is too harsh and oppressive. It is therefore prayed that the illegal termination of the petitioner may kindly be set aside and he be awarded all service consequential benefits including full back-wages.

16. Per contra, Smt. Shailja Thakur, Ld. ADA for the respondent has contended that since the petitioner is guilty of suppression of material facts and has indulged in an act of giving the false information regarding his date of birth on some false and fictitious documents. The enquiry was

conducted by the Assistant Engineer, Majra and his services were rightly terminated by the respondent department. It is therefore prayed that the claim filed by the petitioner may kindly be dismissed.

17. I have given my best anxious considerable thought to the respective submissions of the Learned AR for the petitioner and have also scrutinized the entire case record with minute care, caution and circumspection.

18. At the very outset, it is an admitted position on record that the petitioner was engaged as a regular beldar by the respondent department on the basis of appointment letter dated 12.01.1995 issued in his favour. There is again an admitted position on record that the petitioner after his engagement as beldar w.e.f. 12.01.1995 had served with the respondent department continuously till 31.03.2018 (the date on which the services of the petitioner were terminated). The petitioner had thereby rendered regular and continuous service of more than approximately twenty three years with the respondent. It is also an admitted position on record that the services of the petitioner were terminated by the respondent after conducting a preliminary enquiry on the facts that the petitioner had submitted a false certificate regarding his date of birth. The said enquiry was conducted by the SDO, IPH Majra, who had prepared the enquiry report and submitted to the appropriate authority. It is only on the basis of the said enquiry report, the services of the petitioner were terminated/dismissed vide order dated 31.03.2018.

19. Verily, a short and stint question arose out of the point of controversy which had been narrated down in a short compass that since the petitioner who had attained his age of superannuation by now. According to the petitioner the date of birth of petitioner is 1958, whereas the respondent department are alleging that the petitioner has tendered a false documents regarding date of birth by tempering and his actual date of birth is 1950. The entire controversy is regarding the date of birth year of the petitioner. According to the respondent, the petitioner had tempered the birth year 1950 to 1958, whereas the case of the petitioner is that he was born in the year 1958 itself. It is also the case of the petitioner that he was bound to be retired on attaining the age of superannuation in September, 2018, whereas his services were dismissed on the basis of conducting preliminary enquiry report in March, 2018. In order to substantiate their pleas, both the respondent and petitioner have relied upon the documentary proof. The respondent department had relied upon the enquiry report whereas the petitioner placed reliance on the Aadhar Card and Nakal Pariwar Register on record.

20. On meticulous examination of the case record, the respondent department had conducted the preliminary enquiry through the SDO IPH Majra, which reads as under:

I, Engineer Shyam Singh Pundir, Assistant Engineer, IPH Sub-Division Majra, appointed as enquiry officer by the Executive Engineer, IPH Division Paonta Sahib vide office order No. IPHP-CB-EA-II-Complaint-Ram Kishan/2017-26914-18 dated 25.3.2017 for conducting the detail enquiry of complaint made by Shri Dharma Pal, Shri Shiv Ram, Shri Tara Chand, Shri Rajiv Kumar, Shri Arun and Dinesh Kumar etc. all resident of Village Kotri Bias, Post Office Majra, Tehsil Paonta Sahib District Sirmaur, HP about false date of birth certificate of Shri Ram Kishan s/o Shri Darshan Lal, r/o Korti Nias, Tehsil Paonta Sahib, District Sirmaur, H.P.

Sl. No.	Description of enclosures	Annexure
	Attested copy of Nakal Pariwar Register issued by the Panchat Sahayak, Gram Panchayat Kotri Bias regarding date of birth in respect of Ram Kishan s/o Shri Darshan Lal, r/o Village Kotri Bias, P.O. Majra, Tehsil Paonta Sahib (H.P.) in original.	Annexure -A

2.	Photocopy of complaint made by the villagers of village Koti Bias in the name of Shri Dharma Pal, Shri Shiv Ram, Shri Tara Chand, Shri Rajiv Kumar, Shri Arun and Dinesh etc.	Annexure-B
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I, Er. Shayam Singh Pundir, Assistant Engineer, IPH Sub-Division Majra personally contacted with Panchayat Sahayak, Gram Panchayat Koti Bias on 30.8.2017 and enquire the matter of date of birth of Shri Ram Kishan S/o Shri Darshan Lal, r/o Kotri Bias, Tehsil Paonta Sahib, District Sirmour as per Nakal Pariwar Register, Gram Panchayat Kotri Bias. After checking the Gram Panchayat record, it is found that as per Nakal Pariwar Register the date of birth of Shri Ram Kishan s/o Shri Darshan Lal, r/o Village Kotri Bias is found 23 years as on 1973. The attested copy of Nakal Pariwar Register is being sent to the Executive Engineer, IPH Division Paonta Sahib. The detail of the enclosure is given as under:

COMMENTS: As per the above facts and office record of Gram Panchayat Kotri Bias the date of birth of Shri Ram Kishan s/o Shri Darshan Lal is 23 years as on 1973 as per Nakal Pariwar Register of Gram Panchayat Kotri Bias.

It is also added that as per complaint received from Shri Dharma Pal, Shri Shiv Ram, Shri Tara Chand, Shri Rajiv Kumar, Shri Arun and Dinesh Kumar etc. all resident of Village Kotri Bias vide Diary No. 1791 dated 27.3.2017 vide which the complainer has objected that the age of Shri Ram Kishan s/o Shri Darshan Lal, r/o Kotri Bias is more than 63 years which is true.

In view of above the age of Shri Ram Kishan s/o Shri Darshan Lal r/o Kotri Bias as given in the complaint is found true, as per the record of Gram Panchayat Kotri Bias.”

21. On perusal of said enquiry report, it is also an admitted fact that the petitioner was a regular employee who had put in more than 240 working days in a calendar year continuously and had thereby rendered the flawless tenure of approximately 23 years with the respondent department. The petitioner being a regular employee cannot be ordered to be dismissed from service unless or until a regular and proper domestic enquiry by following the principles of natural justice as well as the procedure prescribed under conduct Rules (CCS & CCA) was conducted against him. It is also an admitted fact that no chargesheet was served upon the petitioner as per the requirement of Rule 14 under CCS & CCA (Conduct Rules) before imposing the penalty of dismissal from service. In the absence of serving any chargesheet upon the petitioner, the respondent department had failed to provide opportunity of being heard to the petitioner. The enquiry report submitted by the SDO concerned is an ex-parte report and was prepared without associating the petitioner, hence, the same has no validity in the eyes of law. The alleged enquiry report cannot be give effect on infliction of the gravest and harsher punishment of dismissal from service after rendering 23 years of continuous service with the respondent department. Even, if for the sake of arguments, it is assumed that the petitioner had manipulated/tempered, overcutting or made any other misconduct in the document then he must be subjected to fair and impartial enquiry to be conducted under the Rules and Regulations provided under the machinery of service jurisprudence. It is also proved on record that before terminating/dismissing the services of the petitioner he was not served with 2nd show cause notice asking him that why such a disastrous step of dismissing his services be not taken on the basis of enquiry report submitted by the enquiry officer.

22. In any case, the documents placed on record would clearly manifested that the date of birth of the petitioner is found mentioned in the service book as 30.09.1958 and similar is the date of birth found mentioned in the application form for GPF i.e. 30.09.1958 and statement of

particular for allotment of GPF number. Moreso, in the Nakal Pariwar Register, as well as in Aadhar Card the birth of year is recorded as 1958. Thus, I do not find any substantial force on the contention raised by the respondent department that the petitioner has tempered his birth year from 1950 to 1958. There is no iota of evidence to strengthen the case of the respondent. It is a matter of common parlance that mere hearsay shall not provide any rescue to the case of the respondent department. It is found mentioned in the enquiry report that the date of birth of the petitioner is found 23 years as per the Nakal Pariwar Register as on 1973. That would not be the valid ground to prove that the petitioner was borne in the year 1950 or 1958. Such mistake could have been made by the concerned Gram Panchyat or Panchyat Secretary or may be for any other reason. The petitioner himself indulged in an act of tempering with the birth year is nowhere proved either from the enquiry report or any other documentary proof on record. Absolutely, there is non-compliance of natural justice before dismissing the services of the petitioner. The petitioner was not afforded a due and proper opportunity of being heard before dismissing his services.

23. Another significant fact of the case that the enunciation of the principles of tearing the wheel for find out the real nature of the order shall apply in a case where the Court is satisfied that there is a direct nexus or connection between the charge so levelled and the action taken by the respondent, if the decision is taken to terminate the services of an employee, after taking into consideration the overall performance and the sole action or inaction on the part of such employee, it cannot be said that it amounts to termination of service as punishment or penalty. It is equally settled that the purpose of conducting preliminary enquiry is to find out that whether there is any prima-facie attached to the allegation and not on the basis of preliminary report, the termination of the services of the petitioner, which was founded on preliminary enquiry as if employer had not held it to find out that whether the petitioner was subjected to fact finding enquiry or main enquiry and whether the services of the petitioner were sustainable for further retention in service or for confirmation as he had already completed the twenty three years of flawless service. The petitioner was about to be superannuated on 30.09.2018, hence, his services were terminated on the basis of preliminary report on 31.3.2018. The reasonable opportunity of being heard was not afforded to him. There is a clear cut violation of the principles of natural justice.

24. Such being the situation, this Tribunal arrives at an inescapable conclusion that the dismissal of the petitioner by the respondent department in the absence of compliance with the mandatory provisions of law, rules and regulations, the dismissal/termination is held to be illegal and as such the dismissal order dated 31.03.2018, is hereby set aside and quashed.

25. Now, adverting to the relief clause the birth year of the petitioner, which found mentioned on the documentary evidence produced before this Court is 30.09.1958. The petitioner was serving in the category of Class-IV employee, who got superannuation after completion of 60 years of age. As such the petitioner had been superannuated from service on 30.09.2018. As such the petitioner is held to be reinstated in service with seniority and continuity in service. The petitioner is held entitled for all retiral benefits after attaining the age of superannuation. The petitioner is also held entitled for back-wages w.e.f. 31.03.2018 to 30.09.2018. Accordingly, this issue is answered in favour of the petitioner and against the respondent.

ISSUE NO.2

26. In support of this issue no evidence has been led by the respondent, which could go to show as to how the present petition is not maintainable. I find nothing wrong with this petition which is perfectly maintainable in the present form. This issue is decided accordingly.

RELIEF

27. As a sequel to my above discussion and findings on issues no.1 & 2, above, the claim of the petitioner succeeds and is hereby allowed. **Resultantly, the petitioner is ordered to be**

reinstated in service from the date of his illegal termination i.e.w.e.f. 31.03.2018. Since, the petitioner has attained the age of superannuation, hence, he is entitled to all retrial benefits such as pension, gratuity etc. Besides this, the respondent department is also directed to pay the full back-wages to the petitioner for the period w.e.f. 31.03.2018 to 30.09.2018. The petition is disposed off in the aforesaid terms.

26. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 19th day of Jan., 2023.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

**BEFORE SHRI RAJESH TOMAR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Reference Number : 231 of 2020
Instituted on : 22-09-2020
Decided on : 23-01-2023

Mastan Singh s/o Shri Mohar Singh, r/o Village Chaura, Tehsil Nichar, District Kinnaur,
H.P. *Petitioner.*

VERSUS

1. The Managing Director, Regent Energy Ltd. (Rakchad Hydro Electric Project), B-1/H-1 Mohan Co-operative Industrial Estate, Mathura Road, New Dehli.
 2. The Assistant Manager (HR & Admin) M/s Regent Energy Ltd., Rakchad Hydro Electric Project Lutuksa Kinnaur at Bhabha Nagar, District Kinnaur, H.P.
- *Respondents.*

Reference under section 10 of the Industrial Disputes Act, 1947

For Petitioner : Ms. Manju Chandel, Advocate
For Respondents : Shri R. K. Khidtta, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 05.09.2020 under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

“Whether termination of the services of Shri Mastan Singh (cook) s/o Shri Mohar Singh, r/o Village Chaura, Tehsil Nichar, District Kinnaur, HP w.e.f. 01.11.2019 by the (I) Managing Director, Regent Energy Ltd. (Rakchad Hydro Electric Project), B-1/H-1 Mohan Co-operative Industrial Estate, Mathura Road, New Dehli (II) The Assistant Manager (HR & Admin) M/s Regent Energy Ltd., Rakchad Hydro Electric

Project Lutuksa Kinnaur at Bhabha Nagar, District Kinnaur HP without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is legal and justified? If not, what relief including reinstatement, back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employers/management?"

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has filed the statement of claim praying therein that he may kindly be ordered to be re-engaged in service at the same place and post and vicinity in which he was working prior to his illegal discontinuation/termination w.e.f. 01.11.2019 along-with all consequential service benefits.

3. To the fore, Shri Ajay Kumar, Assistant Manager of respondents has stated that the industrial dispute raised from the side of the petitioner stood amicably settled between the parties as the respondents have paid a sum of Rs. 2,50,000/- (Two Lakhs Fifty Thousand) to the petitioner as full and final amount of his claim in lieu of reinstatement, back-wages and seniority. Nothing survive in the present claim petition. He has placed on record copy of cheque (PA), copy of Aadhar Card of petitioner (PB), authority letter (PC) and copy of driving licence (PD). To this effect his statement recorded separately.

4. Shri Mastan Singh, petitioner vide his separate statement, has stated that he has amicably settled the industrial dispute with the respondents as the respondents have paid an amount of Rs. 2,50,000/- (Two Lakhs Fifty Thousand) through cheque no. 281322 dated 16.01.2023 to him as full and final amount of his claim in lieu of reinstatement, back-wages and seniority. Nothing survive in the present claim petition.

5. Thus, keeping in view the attendant facts and circumstances of the case *vis-a-vis* perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the late petitioner stood amicably resolved and finally compromised between the parties and the respondents have paid a sum of Rs. 2,50,000/- (Two Lakhs Fifty Thousand) through cheque no. 281322 dated 16.01.2023 (PA) to the petitioner as full and final amount of his claim in lieu of reinstatement, back-wages and seniority. Nothing survive in the present claim petition. From the aforesaid statements of the parties, it is apparently established that the parties have compromised the industrial dispute arising out of reference no. 231 of 2020.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated as the respondents have paid a sum of Rs. 2,50,000/- (Two Lakhs Fifty Thousand) through cheque no. 281322 dated 16.01.2023 (PA)** to the petitioner as full and final amount of his claim in lieu of reinstatement, back-wages and seniority. Nothing survive in the present claim petition.

7. The reference is answered accordingly and the award is passed as per the statements of parties and copy of cheque (PA), copy of Aadhar Card of petitioner (PB), authority letter (PC) and copy of driving licence (PD), shall form the integral part and parcel of this award.

8. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Sd/-
(RAJESH TOMAR),
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

नगर एवं ग्राम योजना विभाग

अधिसूचना

शिमला-2, 27 मई, 2023

संख्या: टी0सी0पी0-एफ0 5/3/2023.—अध्यक्ष—विशेष क्षेत्र विकास प्राधिकरण—एवं—उपखण्ड मजिस्ट्रेट, जुब्बल, तहसील जुब्बल, जिला शिमला, हिमाचल प्रदेश द्वारा, हिमाचल प्रदेश नगर और ग्राम योजना अधिनियम, 1977 (1977 का अधिनियम संख्यांक 12) की धारा 19 की उप-धारा (1) द्वारा प्रदत्त शक्तियों के अधीन हाटकोटी विशेष क्षेत्र के लिए विकास योजना प्रारूप को, नोटिस संख्या: एच.आई.एम./टी.पी./ (रोहडू)/डी.पी.-हाटकोटी/2017/वॉल्यूम-II/1738-60, तारीख 22-11-2022 द्वारा जारी किया गया था और उसे तद्वारा संभाव्य प्रभावित होने वाले व्यक्ति(व्यक्तियों) से राजपत्र (ई-गजट), हिमाचल प्रदेश में प्रकाशन की तारीख से तीस दिन की अवधि के भीतर आक्षेप(आक्षेपों) और सुझाव (सुझावों) को आमन्त्रित करने के लिए तारीख 27-01-2023 को राजपत्र (ई-गजट), हिमाचल प्रदेश में प्रकाशित किया गया था;

और नियत अवधि के भीतर इस निमित कोई भी आक्षेप या सुझाव प्राप्त नहीं हुआ है;

अतः, हिमाचल प्रदेश के राज्यपाल, हिमाचल प्रदेश नगर एवं ग्राम योजना अधिनियम, 1977 (1977 अधिनियम संख्यांक 12) की धारा 20 की उपधारा (1) के अधीन निहित शक्तियों का प्रयोग करते हुए, हाटकोटी विशेष क्षेत्र के लिए विकास योजना को बिना किन्हीं उपान्तरणों के, अनुमोदित करते हैं। इसे नगर एवं ग्राम योजना विभाग, हिमाचल प्रदेश की वेबसाइट डब्ल्यू. डब्ल्यू. डब्ल्यू टी0 सी0 पी0. एच. पी. गोवट. इन (www.tcp.hp.gov.in) पर यू0आर0एल0 https://tcp.hp.gov.in/Application/uploadDocuments/developmentPlan/PlanDoc020230520_124721.pdf सहित डाल दिया गया है और इसे पूर्वोक्त अधिनियम की धारा 20 की उपधारा (4) के अधीन यथा अपेक्षित पूर्व निर्दिष्ट यू.आर.एल. सम्पर्क (लिंकेज) सहित एतद्वारा राजपत्र (ई-गजट), हिमाचल प्रदेश में प्रकाशित करते हैं एतद्वारा नोटिस दिया जाता है कि उक्त विकास योजना की प्रति कार्यालय समय के दौरान निम्नलिखित कार्यालयों में निरीक्षण हेतु उपलब्ध है :

1. अध्यक्ष,
विशेष क्षेत्र विकास प्राधिकरण हाटकोटी—एवं—उपखण्ड मजिस्ट्रेट,
जुब्बल, तहसील जुब्बल, जिला शिमला,
हिमाचल प्रदेश।
2. सदस्य सचिव,
विशेष क्षेत्र विकास प्राधिकरण हाटकोटी—एवं—योजना अधिकारी,
नगर योजना कार्यालय, रोहडू, जिला शिमला,
हिमाचल प्रदेश।

उक्त विकास योजना इस अधिसूचना के राजपत्र (ई-गजट), हिमाचल प्रदेश में प्रकाशन की तारीख से प्रवर्तन में आएगी।

आदेश द्वारा,

देवेश कुमार,
प्रधान सचिव (नगर एवं ग्राम योजना)।

[Authoritative English text of this Department Notification No. TCP-F05/3/2023 dated 27-05-2023 as required under clause (3) of Article 348 of the Constitution of India].

TOWN AND COUNTRY PLANNING DEPARTMENT

NOTIFICATION

Shimla, the 27th May, 2023

No.TCP-F05/3/2023.—WHEREAS, the draft Development Plan for Hatkoti Special Area was issued by the Chairman SADA Hatkoti-cum-Sub-Divisional Magistrate, Jubbal, Tehsil Jubbal, District Shimla, Himachal Pradesh, under the powers conferred by sub-section (1) of section 19 of the Town and Country Planning Act, 1977 (Act No. 12 of 1977) *vide* Notice **No. HIM/TP/(Rohru)/DP-Hatkoti/2017/Vol-II/1738-60** dated **22-11-2022** and the same was published in the Rajpatra (e-Gazette), Himachal Pradesh on **27-01-2023** for inviting objection(s) and suggestion(s) from the person(s) likely to be affected thereby within 30 days from the date of publication in Rajpatra (e-Gazette), Himachal Pradesh;

AND WHEREAS, no objection(s) or suggestion(s) have been received in this behalf within the stipulated period;

NOW THEREFORE, in exercise of the power vested under sub-section (1) of section 20 of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12 of 1977), the Governor, Himachal Pradesh is pleased to approve the Development Plan for **Hatkoti Special Area**, without modification. It has been hosted at the official website of Department of Town and Country Planning, Himachal Pradesh www.tcp.hp.gov.in with URL: https://tcp.hp.gov.in/Application/uploadDocuments/developmentPlan/PlanDoc020230520_124721.pdf. The same is hereby published in the Official Gazette of Himachal Pradesh with fore-referred URL linkage as required under sub-section (4) of section 20 of the Act *ibid*. A Notice is hereby given that a copy of the said Development Plan is available for inspection during office hours in the following offices:—

1. The Chairman,
SADA, Hatkoti- cum-Sub- Divisional, Magistrate,
Jubbal, Tehsil Jubbal, District Shimla,
Himachal Pradesh.
2. The Member Secretary SADA Hatkoti-cum-
Planning Officer,
Town Planning Office, Rohru,
District Shimla, Himachal Pradesh.

The said Development Plan shall come into operation from the date of publication of this Notification in the Rajpatra (e-Gazette), Himachal Pradesh.

By order,

DEVESH KUMAR,
Principal Secretary (TCP).

नगर एवं ग्राम योजना विभाग

अधिसूचना

शिमला-2, 27 मई, 2023

संख्या: टी0सी0पी0-एफ05/10/2022.—मेहतपुर योजना क्षेत्र के लिए विकास योजना प्रारूप को, नोटिस संख्या: एच.आई.एम./टी.पी./पीजे.टी./डी.पी.-मेहतपुर/2003/वॉल्यूम-v/6489-99, तारीख 16-12-2022 द्वारा हिमाचल प्रदेश नगर एवं ग्राम योजना अधिनियम, 1977 (1977 का अधिनियम संख्यांक 12) की धारा 19 की उपधारा (1) द्वारा प्रदत्त शक्तियों के अधीन निदेशक, नगर एवं ग्राम योजना विभाग, हिमाचल

प्रदेश, शिमला द्वारा जारी किया गया था और उसे तद्वारा संभाव्य प्रभावित होने वाले व्यक्ति (व्यक्तियों) से राजपत्र (ई-गजट), हिमाचल प्रदेश में प्रकाशन की तारीख से तीस दिन की अवधि के भीतर आक्षेप और सुझाव आमन्त्रित करने के लिए तारीख 21-12-2022 को राजपत्र (ई-गजट), हिमाचल प्रदेश में प्रकाशित किया गया था/किए गए थे;

और नियत अवधि के भीतर इस निमित कोई भी आक्षेप/सुझाव प्राप्त नहीं हुआ है/हुए हैं;

अतः, हिमाचल प्रदेश के राज्यपाल, हिमाचल प्रदेश नगर एवं ग्राम योजना अधिनियम, 1977 (1977 का अधिनियम संख्यांक 12) की धारा 20 की उपधारा (1) के अधीन निहित शक्तियों का प्रयोग करते हुए, मेहतपुर योजना क्षेत्र के लिए विकास योजना को, बिना किन्हीं उपान्तरणों के, अनुमोदित करते हैं। इसे नगर एवं ग्राम योजना विभाग, हिमाचल प्रदेश की वेबसाइट www.tcp.hp.gov.in पर यू0आर0एल0 https://tcp.hp.gov.in/Application/uploadDocuments/devlopmentPlan/PlanDoc020230520_125218.pdf सहित डाल दिया गया है और इसी को पूर्वोक्त अधिनियम की धारा 20 की उपधारा (4) के अधीन यथा अपेक्षित पूर्व निर्दिष्ट यू.आर.एल. सम्पर्क (लिंकेज) सहित एतद्वारा राजपत्र (ई-गजट), हिमाचल प्रदेश में प्रकाशित किया गया माना जा सकेगा। एतद्वारा नोटिस दिया जाता है कि उक्त विकास योजना की प्रति कार्यालय समय के दौरान निम्नलिखित कार्यालयों में निरीक्षण हेतु उपलब्ध है :-

1. निदेशक,
नगर एवं ग्राम योजना विभाग,
नगर योजना भवन, ब्लाक संख्या: 32-ए,
कसुम्पटी, शिमला, हिमाचल प्रदेश।
2. सहायक नगर योजनाकार,
उप-मण्डलीय, नगर योजना कार्यालय, ऊना,
जिला ऊना, हिमाचल प्रदेश।

उक्त विकास योजना इस अधिसूचना के राजपत्र (ई-गजट), हिमाचल प्रदेश में प्रकाशन की तारीख से प्रवर्तन में आएगी।

आदेश द्वारा,

देवेश कुमार,
प्रधान सचिव (नगर एवं ग्राम योजना)।

[Authoritative English text of this department Notification No. TCP-F05/10/2022, dated 27-05-2023 as required under clause (3) of Article 348 of the Constitution of India].

TOWN AND COUNTRY PLANNING DEPARTMENT

NOTIFICATION

Shimla, the 27th May, 2023

No. TCP-F05/10/2022.—WHEREAS, the draft Development Plan for **Mehatpur Planning Area** was issued by the Director, Town and Country Planning Department, Himachal Pradesh, Shimla under the powers conferred by sub-section (1) of section 19 of the Town and Country

Planning Act, 1977 (Act No. 12 of 1977) *vide* Notice **No. HIM/TP/PJT/DP-Mehatpur/2003/Vol-V/6489-99**, dated **16-12-22** and the same was published in the Rajpatra (e-gazette), Himachal Pradesh on **21-12-2022** for inviting objection(s) and suggestion(s) from the person(s) likely to be affected thereby within 30 days from the date of publication in Rajpatra (e-Gazette), Himachal Pradesh;

AND WHEREAS, no objection(s) and suggestion(s) have been received in this behalf within the stipulated period;

NOW THEREFORE, in exercise of the powers vested under sub-section (1) of section 20 of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No.12 of 1977), the Governor, Himachal Pradesh is pleased to approve the Development Plan for **Mehatpur Planning Area**, without modifications. It has been hosted at the official website of Department of Town and Country Planning, Himachal Pradesh www.tcp.hp.gov.in with URL: https://tcp.hp.gov.in/Application/upload Documents/development Plan/PlanDoc020230520_125218.pdf. The same may be deemed to have been published in the Official Gazette of Himachal Pradesh with fore-referred URL linkage as required under sub-section (4) of section 20 of the Act *ibid*. A Notice is hereby given that a copy of the said Development Plan is available for inspection during office hours in the following offices:—

1. The Director,
Town and Country Planning Department,
Nagar Yojana Bhawan, Block No. 32-A,
Kasumpti, Shimla, Himachal Pradesh-171009.
2. The Assistant Town Planner,
Sub-Divisional Town Planning Office, Una,
Distt. Una, Himachal Pradesh.

The said Development Plan shall come into operation from the date of publication of this Notification in Rajpatra (e-Gazette), Himachal Pradesh.

By order,

DEVESH KUMAR,
Principal Secretary (TCP).

URBAN DEVELOPMENT DEPARTMENT

NOTIFICATION

Shimla-2, the 30th May, 2023

No. UD-A(1)-3/2021-L.—In exercise of the powers conferred by Sub-Section (4) of Section 10 of the Himachal Pradesh Municipal Act, 1994, the Governor, Himachal Pradesh is pleased to nominate the following persons as members (Government Nominee) in Municipal Council Rampur Bushahr Distt. Shimla in Himachal Pradesh:—

- i. Sh. Rakesh Gupta s/o Late Sh. Mohan Lal Gupta, Ward No. 4, Main Bazar Rampur Bsr., Distt. Shimla, HP.

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- ii. Sh. Susheel Thakur s/o Sh. Lt. Gulab Thakur, House No. 49, Mahavir Mohalla, Main Bazar Rampur Bsr., Distt. Shimla, H.P.
 - iii. Smt. Anuradha Devi w/o Sh. Sanjeev Kumar Ward No. 4, Main Bazar Rampur Bsr. Distt.
 - iv. Sh. Grish Gautam, s/o Sh. Gopal Krishan Gautam, Gauti's café Lounge, Gautam Complex, Ward No. 4 Mahavir Mohalla, Main Bazar, Rampur Bsr. Distt. Shimla, H.P.

By order,

DEVESH KUMAR,
Pr. Secetary (UD).

URBAN DEVELOPMENT DEPARTMENT

NOTIFICATION

Shimla-2, the 31st May, 2023

No. UD-A(1)-3/2021-L.—In exercise of the powers conferred by Sub-Section (4) of Section 10 of the Himachal Pradesh Municipal Act, 1994, the Governor, Himachal Pradesh is pleased to nominate the following persons as members (Government Nominee) in Municipal Council Mahatpur Basdehra Distt. Una in Himachal Pradesh:—

- i. Sh. Rahul Aery s/o Sh. Sham Lal, r/o Ward No. 2, MC Mehatpur Basdehra, Distt. Una, H.P.
- ii. Sh. Hardeep Singh s/o Sh. Satnam Singh, Ward No. 8, MC Mehatpur Basdehra, Distt. Una, H.P.
- iii. Sh. Vijay Kumar s/o Sh. Raghuveer Singh r/o Ward No. 9, MC Mehatpur Basdehra, Distt. Una, H.P.
- iv. Smt. Anita Sharma w/o Sh. Avinash Sharma, r/o Ward No. 1, MC Mehatpur Basdehra, Distt. Una, H.P.

By order,

DEVESH KUMAR,
Pr. Secetary (UD).

SPECIFIC NOTIFICATION FINANCE DEPARTMENT

NOTIFICATION

Shimla, the 1st June, 2023

No. Fin-2-C(12)-1/2023(I).—Government of Himachal Pradesh hereby notifies the sale of Himachal Pradesh Government Stock (Securities) of 6-year tenure for an aggregate amount of Rs. **300 crore** (Nominal). The sale will be subject to the terms and conditions spelt out in this

notification (called specific Notification) as also the terms and conditions specified in the General Notification No. Fin-2-C(12)-11/2003 dated July 20, 2007 of Government of Himachal Pradesh.

Object of the Loan :

1. (i) The Proceeds of the State Government Securities will be utilized for the development programme of the Government of Himachal Pradesh.
- (ii) Consent of Central Government has been obtained to the floatation of this loan as required by Article 293(3) of the Constitution of India.

Method of Issue :

2. Government Stock will be sold through the Reserve Bank of India, Mumbai Office (PDO) Fort, Mumbai-400 001 by auction in the manner as prescribed in paragraph 6.1 of the General Notification No. Fin-2-C(12)-11/2003 dated July 20, 2007 at a coupon rate to be determined by the Reserve Bank of India at the **yield** based auction under multiple price formats.

Allotment to Non-competitive Bidders :

3. The Government Stock up to 10 % of the notified amount of the sale will be allotted to eligible individuals and institutions subject to a maximum limit of 1 % of the notified amount for a single bid as per the Revised Scheme for Non-competitive Bidding Facility in the Auctions of State Government Securities of the General Notification (Annexure -II).

Place and Date of Auction :

4. The auction will be conducted by the Reserve Bank of India, at its Mumbai Office, Fort, Mumbai - 400 001 on **June 06, 2023**. Bids for the auction should be submitted in electronic format, on the Reserve Bank of India Core Banking Solution (E-Kuber) system as stated below on **June 06, 2023**.

- (a) The competitive bids shall be submitted electronically on the Reserve Bank of India Core Banking Solution (E-Kuber) system between 10.30 A.M. and 11.30 A.M.
- (b) The non-competitive bids shall be submitted electronically on the Reserve Bank of India Core Banking Solution (E-Kuber) system between 10.30 A.M. and 11.00 A.M.

Result of the Auction :

5. The result of the auction shall be displayed by the Reserve Bank of India on its website on the same day. The payment by successful bidders will be on **June 07, 2023**.

Method of Payment :

6. Successful bidders will make payments on **June 07, 2023** before close of banking hours by means of cash, bankers' cheque/pay order, demand draft payable at Reserve Bank of India, Mumbai/New Delhi or a cheque drawn on their account with Reserve Bank of India, Mumbai (Fort)/New Delhi.

Tenure :

7. The Stock will be of **6-year** tenure. The tenure of the Stock will commence on **June 07, 2023**.

Date of Repayment :

8. The loan will be repaid at par on **June 07, 2029**.

Rate of Interest :

9. The cut-off yield determined at the auction will be the coupon rate percent per annum on the Stock sold at the auction. The interest will be paid on **December 07 and June 07**.

Eligibility of Securities :

10. The investment in Government Stock will be reckoned as an eligible investment in Government Securities by banks for the purpose of Statutory Liquidity Ratio (SLR) under section 24 of the Banking Regulation Act, 1949. The stocks will qualify for the ready forward facility.

By order and in the name of the Governor of Himachal Pradesh,

(AKSHAY SOOD)
*Secretary (Finance),
to the Government of Himachal Pradesh.*

**SPECIFIC NOTIFICATION
FINANCE DEPARTMENT**

NOTIFICATION

Shimla, the 1st June, 2023

No. Fin-2-C(12)-1/2023-(II).—Government of Himachal Pradesh hereby notifies the sale of Himachal Pradesh Government Stock (Securities) of **8-year** tenure for an aggregate amount of Rs. **500 crore** (Nominal). The sale will be subject to the terms and conditions spelt out in this notification (called specific Notification) as also the terms and conditions specified in the General Notification No. Fin-2-C(12)-11/2003 dated July 20, 2007 of Government of Himachal Pradesh.

Object of the Loan :

1. (i) The Proceeds of the State Government Securities will be utilized for the development programme of the Government of Himachal Pradesh.
- (ii) Consent of Central Government has been obtained to the floatation of this loan as required by Article 293(3) of the Constitution of India.

Method of Issue :

2. Government Stock will be sold through the Reserve Bank of India, Mumbai Office (PDO) Fort, Mumbai- 400 001 by auction in the manner as prescribed in paragraph 6.1 of the General Notification No. Fin-2-C(12)-11/2003 dated July 20, 2007 at a coupon rate to be determined by the Reserve Bank of India at the **yield** based auction under multiple price formats.

Allotment to Non-competitive Bidders :

3. The Government Stock up to 10 % of the notified amount of the sale will be allotted to eligible individuals and institutions subject to a maximum limit of 1 % of the notified amount for a single bid as per the Revised Scheme for Non-competitive Bidding Facility in the Auctions of State Government Securities of the General Notification (Annexure-II).

Place and Date of Auction :

4. The auction will be conducted by the Reserve Bank of India, at its Mumbai Office, Fort, Mumbai - 400 001 on **June 06, 2023**. Bids for the auction should be submitted in electronic format, on the Reserve Bank of India Core Banking Solution (E-Kuber) system as stated below on **June 06, 2023**.

- (a) The competitive bids shall be submitted electronically on the Reserve Bank of India Core Banking Solution (E-Kuber) system between 10.30 A.M. and 11.30 A.M.
- (b) The non-competitive bids shall be submitted electronically on the Reserve Bank of India Core Banking Solution (E-Kuber) system between 10.30 A.M. and 11.00 A.M.

Result of the Auction :

5. The result of the auction shall be displayed by the Reserve Bank of India on its website on the same day. The payment by successful bidders will be on **June 07, 2023**.

Method of Payment :

6. Successful bidders will make payments on **June 07, 2023** before close of banking hours by means of cash, bankers' cheque/pay order, demand draft payable at Reserve Bank of India, Mumbai/New Delhi or a cheque drawn on their account with Reserve Bank of India, Mumbai (Fort)/New Delhi.

Tenure :

7. The Stock will be of **8-year** tenure. The tenure of the Stock will commence on **June 07, 2023**.

Date of Repayment :

8. The loan will be repaid at par on **June 07, 2031**.

Rate of Interest :

9. The cut-off yield determined at the auction will be the coupon rate percent per annum on the Stock sold at the auction. The interest will be paid on **December 07 and June 07.**

Eligibility of Securities :

10. The investment in Government Stock will be reckoned as an eligible investment in Government Securities by banks for the purpose of Statutory Liquidity Ratio (SLR) under section 24 of the Banking Regulation Act, 1949. The stocks will qualify for the ready forward facility.

By order and in the name of the Governor of Himachal Pradesh,

(AKSHAY SOOD)
Secretary (Finance),
to the Government of Himachal Pradesh.

ब अदालत नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी, उप-तहसील सुलह,
जिला कांगड़ा (हि0प्र0)

किस्म मुकदमा : जन्म/मृत्यु पंजीकरण

तारीख पेशी : 05-06-2023

निम्नो देवी पत्नी धर्म चंद, निवासी गांव मझाकड़ा, डा0 सुलह, उप-तहसील सुलह, जिला कांगड़ा (हि0प्र0)।

बनाम

सर्वसाधारण एवं आम जनता

प्रार्थना-पत्र अधिनियम धारा 13(3) जन्म/मृत्यु पंजीकरण एक्ट 1969.

प्रार्थिया निम्नो देवी पत्नी धर्म चंद, निवासी गांव मझाकड़ा, डा0 सुलह, उप-तहसील सुलह, जिला कांगड़ा (हि0प्र0) ने इस अदालत में प्रार्थना-पत्र पेश किया है कि प्रार्थिन की सास गोंदा देवी की मृत्यु दिनांक 16-08-2012 को गांव मझाकड़ा में हुई है लेकिन ग्राम पंचायत सुलह के अभिलेख में मृत्यु पंजीकरण न हुआ है। अतः ग्राम पंचायत सुलह के अभिलेख में मृत्यु पंजीकरण के आदेश जारी किए जाएं।

अतः अब इस इशतहार द्वारा सर्वसाधारण को सूचित किया जाता है कि यदि इस बारे किसी व्यक्ति को कोई उजर व एतराज है तो वह दिनांक 05-06-2023 को प्रातः 11.00 बजे अदालतन या वकालतन हाजिर अदालत आकर प्रस्तुत कर सकता है। बाद गुजरने मियाद कोई भी उजर या एतराज काबिले समायत न होगा तथा प्रार्थिन की सास गोंदा देवी की मृत्यु दिनांक 16-08-2012 के आदेश सम्बन्धित पंचायत को पंचायत रिकार्ड में दर्ज करने हेतु जारी कर दिए जाएंगे।

आज दिनांक 06-04-2023 को हमारे हस्ताक्षर व मोहर सहित जारी हुआ।

मोहर।

हस्ताक्षरित /—
नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी,
उप-तहसील सुलह, जिला कांगड़ा (हि0प्र0)।

**ब अदालत नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी, उप-तहसील सुलह,
जिला कांगड़ा (हि0प्र0)**

किस्म मुकद्दमा : जन्म/मृत्यु पंजीकरण

तारीख पेशी : 08-06-2023

तिलक राज पुत्र परमा राम, निवासी मझाकड़ा, डा0 सुलह, उप-तहसील सुलह, जिला कांगड़ा (हि0प्र0)।

बनाम

सर्वसाधारण एवं आम जनता

प्रार्थना-पत्र अधिनियम धारा 13(3) जन्म/मृत्यु पंजीकरण एक्ट 1969.

प्रार्थी तिलक राज पुत्र परमा राम, निवासी मझाकड़ा, डा0 सुलह, उप-तहसील सुलह, जिला कांगड़ा (हि0प्र0) ने इस अदालत में प्रार्थना-पत्र पेश किया है कि प्रार्थी के भाई की मृत्यु दिनांक 01-10-2010 को गांव मझाकड़ा में हुई है लेकिन ग्राम पंचायत सुलह के अभिलेख में मृत्यु पंजीकरण न हुआ है। अतः ग्राम पंचायत सुलह के अभिलेख में मृत्यु पंजीकरण के आदेश जारी किए जाएं।

अतः अब इस इशतहार द्वारा सर्वसाधारण को सूचित किया जाता है कि यदि इस बारे किसी व्यक्ति को कोई उजर व एतराज है तो वह दिनांक 08-06-2023 को प्रातः 11.00 अजे असालतन या वकालतन हाजिर अदालत आकर प्रस्तुत कर सकता है। बाद गुजरने मियाद कोई भी उजर या एतराज काबिले समायत न होगा तथा प्रार्थी के भाई प्रीतम चन्द पुत्र परमा राम की मृत्यु दिनांक 01-10-2010 के आदेश सम्बन्धित पंचायत को पंचायत रिकार्ड में दर्ज करने हेतु जारी कर दिए जाएंगे।

आज दिनांक 06-04-2023 को हमारे हस्ताक्षर व मोहर सहित जारी हुआ।

मोहर।

हस्ताक्षरित/—
नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी,
उप-तहसील सुलह, जिला कांगड़ा (हि0प्र0)।

**ब अदालत नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय श्रेणी, उप-तहसील सुलह,
जिला कांगड़ा (हि0प्र0)**

किस्म मुकद्दमा : नाम दुरुस्ती

तारीख पेशी : 08-06-2023

श्री विक्रम सिंह पुत्र साली राम पुत्र रामा, निवासी महाल सिंहोटू उपरला, डा0 अटियाला दाई, उप-तहसील सुलह, जिला कांगड़ा (हि0प्र0)।

बनाम

आम जनता

विषय.—नाम दुरुस्ती करने हेतु।

प्रार्थी श्री विक्रम सिंह पुत्र श्री साली राम पुत्र रामा, निवासी महाल सिंहोटू उपरला, डा0 अटियाला दाई, उप-तहसील सुलह, जिला कांगड़ा (हि0प्र0) ने इस अदालत में प्रार्थना-पत्र मय शपथ-पत्र प्रस्तुत किया

है कि प्रार्थी का वास्तविक व विख्यात नाम विक्रम सिंह पुत्र साली राम है परन्तु महाल सिहोदू बूहला के राजस्व अभिलेख में सहबन विक्रम चन्द पुत्र साली राम दर्ज कागजात माल है जोकि गलत है अतः प्रार्थी अपने नाम की दुरुस्ती करवाना चाहता है।

अतः इस मुस्त्री मुनादी चस्पांगी व इशतहार राजपत्र, हि0प्र0 के माध्यम से आम जनता को सूचित किया जाता है कि उपरोक्त नाम की दुरुस्ती बारे किसी को कोई एतराज हो तो वह दिनांक 08-06-2023 को असालतन या वकालतन इस कार्यालय में हाजिर होकर उजर पेश कर सकता है। हाजिर न आने की सूरत में एकतरफा कार्यवाही अमल में लाई जाएगी।

आज दिनांक 06-04-2023 को हमारे हस्ताक्षर व मोहर सहित जारी हुआ।

मोहर।

हस्ताक्षरित /—
नायब तहसीलदार सहायक समाहर्ता द्वितीय श्रेणी,
उप-तहसील सुलह, जिला कांगड़ा (हि0प्र0)।

ब अदालत नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी, उप-तहसील सुलह,
जिला कांगड़ा (हि0प्र0)

निक्को देवी पुत्री मीनक राम, निवासी गांव व डा0 घनेटा, उप-तहसील सुलह, जिला कांगड़ा (हि0प्र0)।

बनाम

आम जनता

प्रार्थना-पत्र जेर धारा 13(3) जन्म/मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत।

प्रार्थिया निक्को देवी पुत्री मीनक राम, निवासी गांव व डा0 घनेटा, उप-तहसील सुलह, जिला कांगड़ा (हि0प्र0) ने इस अदालत में प्रार्थना-पत्र गुजारा है कि प्रार्थिन का जन्म दिनांक 19-06-1974 को गांव घनेटा में हुआ है परन्तु अज्ञानतावश ग्राम पंचायत घनेटा के अभिलेख में जन्म पंजीकरण न हुआ है। इस बारे पंचायत के रिकार्ड में पंजीकरण करने के आदेश दिए जाएं।

अतः इस नोटिस के माध्यम से सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त पंजीकरण करने बारे कोई उजर व एतराज हो तो वह दिनांक 05-06-2023 को प्रातः 11.00 बजे इस न्यायालय में असालतन या वकालतन हाजिर अदालत आकर प्रस्तुत कर सकता है। अन्यथा प्रार्थिया निक्को देवी पुत्री मीनक राम के जन्म पंजीकरण करने के आदेश दिए जाएंगे। उसके उपरान्त कोई उजर या एतराज न सुना जाएगा।

आज दिनांकको हमारे हस्ताक्षर व मोहर सहित जारी हुआ।

मोहर।

हस्ताक्षरित /—
नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी,
उप-तहसील सुलह, जिला कांगड़ा (हि0प्र0)।

**ब अदालत नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी, उप-तहसील सुलह,
जिला कांगड़ा (हि0प्र0)**

पंकज पुत्र मान सिंह, निवासी गांव व डा0 मैझा, उप-तहसील सुलह, जिला कांगड़ा (हि0प्र0)।

बनाम

आम जनता

प्रार्थना-पत्र जेर धारा 13(3) जन्म/मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत।

प्रार्थी पंकज पुत्र मान सिंह, निवासी गांव व डा0 मैझा, उप-तहसील सुलह, जिला कांगड़ा (हि0प्र0) ने इस अदालत में प्रार्थना-पत्र गुजारा है कि प्रार्थी का जन्म दिनांक 04-12-1990 को गांव व डा0 मैझा में हुआ है परन्तु अज्ञानतावश ग्राम पंचायत मैझा के अभिलेख में जन्म पंजीकरण न हुआ है। इस बारे पंचायत के रिकार्ड में पंजीकरण करने के आदेश दिए जाएं।

अतः इस नोटिस के माध्यम से सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त पंजीकरण करने बारे कोई उजर व एतराज हो तो वह दिनांक 07-06-2023 को प्रातः 11.00 बजे इस न्यायालय में असालतन या वकालतन हाजिर अदालत आकर प्रस्तुत कर सकता है। अन्यथा प्रार्थी पंकज पुत्र मान सिंह के जन्म पंजीकरण करने के आदेश दिए जाएंगे। उसके उपरान्त कोई उजर या एतराज न सुना जाएगा।

आज दिनांकको हमारे हस्ताक्षर व मोहर सहित जारी हुआ।

मोहर।

हस्ताक्षरित / -

नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी,
उप-तहसील सुलह, जिला कांगड़ा (हि0प्र0)।

**ब अदालत नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी, उप-तहसील सुलह,
जिला कांगड़ा (हि0प्र0)**

मनजीत कुमारी पत्नी मदन लाल, निवासी गांव मण्डप, डा0 अटियाला दाई, उप-तहसील सुलह, जिला कांगड़ा (हि0प्र0)।

बनाम

आम जनता

प्रार्थना-पत्र जेर धारा 13(3) जन्म/मृत्यु पंजीकरण अधिनियम, 1969 के अन्तर्गत।

प्रार्थिया मनजीत कुमारी पत्नी मदन लाल, निवासी गांव मण्डप, डा0 अटियाला दाई, उप-तहसील सुलह, जिला कांगड़ा (हि0प्र0) ने इस अदालत में प्रार्थना-पत्र गुजारा है कि प्रार्थिन की सास खण्डो देवी विधवा प्रेम दास की मृत्यु दिनांक 27-12-2010 को गांव मण्डप में हुई है परन्तु अज्ञानतावश ग्राम पंचायत कुरल के अभिलेख में मृत्यु पंजीकरण न हुआ है। इस बारे पंचायत के रिकार्ड में पंजीकरण करने के आदेश दिए जाएं।

अतः इस नोटिस के माध्यम से सर्वसाधारण को सूचित किया जाता है कि यदि किसी व्यक्ति को उपरोक्त पंजीकरण करने बारे कोई उजर व एतराज हो तो वह दिनांक 20-06-2023 को प्रातः 11.00 बजे इस न्यायालय में असालतन या वकालतन हाजिर अदालत आकर प्रस्तुत कर सकता है। अन्यथा खण्डो देवी विधवा प्रेम दास के मृत्यु पंजीकरण करने के आदेश सम्बन्धित पंचायत को जारी किए जाएंगे। उसके उपरान्त कोई उजर या एतराज न सुना जाएगा।

आज दिनांकको हमारे हस्ताक्षर व मोहर सहित जारी हुआ।

मोहर।

हस्ताक्षरित /—
नायब तहसीलदार एवं कार्यकारी दण्डाधिकारी,
उप-तहसील सुलह, जिला कांगड़ा (हि0प्र0)।

ब अदालत सहायक समाहर्ता प्रथम श्रेणी, डाडासीबा, जिला कांगड़ा (हि0 प्र0)

रोहित कुमार पुत्र श्रीमती संतोष कुमारी विधवा फ्रांसीसी, वासी महाल बेहड, तहसील डाडासीबा, जिला कांगड़ा (हि0प्र0) प्रार्थी।

बनाम

1. शकुन्तला देवी के वारसान—(a) विनोद कुमार पुत्र, (b) राकेश कुमार पुत्र व (c) सरोज बाला पुत्री किशोरी लाल वार्ड नं0 मौ0 न्यू जवाहर नगर हिसार, 2. राहुल पुत्र, 3. विशाल पुत्र, 4. श्रीमती कमलेश कुमारी विधवा करनैल सिंह, 5. श्रीमती कमलेश कुमारी पुत्री फ्रांसीसी, 6. श्रीमती विद्या देवी के वारसान—(a) शुभम पुत्र (b) पलक देवी पुत्री व (c) श्रेष्ठा देवी विधवा सरूप सिंह, 7. कृष्ण सिंह पुत्र, 8. ओंकार सिंह पुत्र खुशी राम, 9. पवन कुमार पुत्र ओंकार सिंह, 10. सुभाष चन्द पुत्र, 11. रूपलाल पुत्र, 12. प्रभात चन्द पुत्र, 13. श्रीमती करतारो देवी विधवा बलदेव सिंह निवासीगण महाल बेहड, डा0 चनौर, तहसील डाडासीबा, जिला कांगड़ा (हि0प्र0) प्रत्यार्थीगण।

उनवान मुकद्दमा.—तकसीम जेर धारा 123 भू-राजस्व अधिनियम 1954, बाबत भूमि खाता नं0 18, खतौनी नं0 26 ता 27, खसरा कित्ता 03, रकबा तादादी 00-72-08 है0 वाक्या महाल बेहड, डा0 चनौर जमाबन्दी वर्ष 2013-14 तहसील डाडासीबा, जिला कांगड़ा (हि0प्र0)।

इस अदालत में रोहित कुमार पुत्र श्रीमती संतोष कुमारी विधवा फ्रांसीसी, वासी महाल बेहड बाबत भूमि खाता नं0 18, खतौनी नं0 26 ता 27, खसरा कित्ता 03, रकबा तादादी 00-72-08 है0 वाक्या महाल बेहड, जमाबन्दी वर्ष 2012-13 तहसील डाडासीबा, जिला कांगड़ा (हि0प्र0) द्वारा दायर तकसीम हुक्मन हेतु अदालत हजा में प्रार्थना-पत्र पेश किया है कि उपरोक्त प्रत्यार्थीगणों के सही पते मालूम नहीं है। जिसके कारण सही तरीके से समन की तामील न हो पा रही है तथा मुकद्दमा तकसीम में विलम्ब हो रहा है।

अतः इस इशतहार द्वारा उपरोक्त प्रतिवादीगणों को बजरिया इशतहार सूचित किया जाता है कि यदि किसी को भी उपरोक्त भूमि की तकसीम करने में किसी प्रकार का एतराज हो तो वह दिनांक 06-06-2023 को प्रातः 10.00 बजे असालतन या वकालतन अधोहस्ताक्षरी की अदालत में हाजिर आकर लिखित व मौखिक प्रस्तुत करें। यदि उक्त तारीख तक कोई उजर/एतराज प्रस्तुत न हुआ तो समझा जावेगा कि उक्त भूमि की तकसीम बारे किसी को कोई आपत्ति नहीं है तथा मामले में नियमानुसार एकतरफा कार्यवाही अमल में लाकर मामले का निपटारा कर दिया जायेगा।

आज दिनांक 19-05-2023 को मेरे हस्ताक्षर व मोहर न्यायालय द्वारा जारी किया गया।

मोहर।

हस्ताक्षरित /—
सहायक समाहर्ता प्रथम श्रेणी,
डाडासीबा, जिला कांगड़ा (हि0प्र0)।

**ब अदालत नायब तहसीलदार एवम् सहायक समाहर्ता द्वितीय श्रेणी, भवारना,
जिला कांगड़ा (हि0प्र0)**

मुकद्दमा नं0...../2023

किस्म मुकद्दमा : जन्म पंजीकरण

तारीख पेशी : 07-06-2023

कैलाश चन्द पुत्र ओंकार चन्द, निवासी गांव ठन्डोल, उप-तहसील भवारना, जिला कांगड़ा (हि0प्र0)।

बनाम

आम जनता

विषय.—जन्म पंजीकरण बारे।

प्रार्थना—पत्र अधीन धारा 13(3) जन्म/मृत्यु पंजीकरण अधिनियम, 1969 के तहत कैलाश चन्द पुत्र ओंकार चन्द, निवासी गांव ठन्डोल, उप-तहसील भवारना, जिला कांगड़ा (हि0प्र0) ने इस अदालत में प्रार्थना—पत्र दिया है कि उसका जन्म दिनांक 29-04-1974 को गांव व ग्राम पंचायत ठन्डोल, उप-तहसील भवारना, जिला कांगड़ा (हि0 प्र0) में हुआ था। मगर ग्राम पंचायत ठन्डोल के अभिलेख में दर्ज न है।

अतः इस इशतहार राजपत्र हि0प्र0 द्वारा सर्वसाधारण को सूचित किया जाता है कि यदि इस जन्म पंजीकरण बारे किसी व्यक्ति या संस्था को उजर या एतराज हो तो वह दिनांक 07-06-2023 को सुबह 10.00 बजे असातन या वकालतन हाजिर होकर उजर प्रस्तुत कर सकता है। बाद गुजरने मियाद कोई भी उजर या एतराज काबिले समायत न होगा तथा प्रार्थी कैलाश चन्द पुत्र ओंकार चन्द की जन्म तिथि 29-04-1974 के पंजीकरण के आदेश सम्बन्धित स्थानीय उप-पंजीकार व ग्राम पंचायत विकास अधिकारी को पारित कर दिये जायेंगे।

आज दिनांक 27-04-2023 को मेरे हस्ताक्षर व मोहर सहित जारी हुआ।

मोहर।

हस्ताक्षरित/—
नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय श्रेणी,
भवारना, जिला कांगड़ा (हि0प्र0)।

CHANGE OF NAME

I, JC-805008X Sub/Instr. Sanjay Kumar Sharma, Unit HQ 39 Mtn. Div. C/o 56APO s/o Late Sh. Madan Lal Sharma, r/o V.P.O. Deogran, Tehsil Palampur, Distt. Kangra (H.P.) declare that in my Army Record my name is inadvertently recorded as Sanjay Kumar. Whereas my correct name is Sanjay Kumar Sharma *vide* affidavit dated 23-05-2023 before Executive Magistrate Palampur.

SANJAY KUMAR SHARMA
s/o Late Sh. Madan Lal Sharma,
r/o V.P.O. Deogran,
Tehsil Palampur, Distt. Kangra (H.P.).